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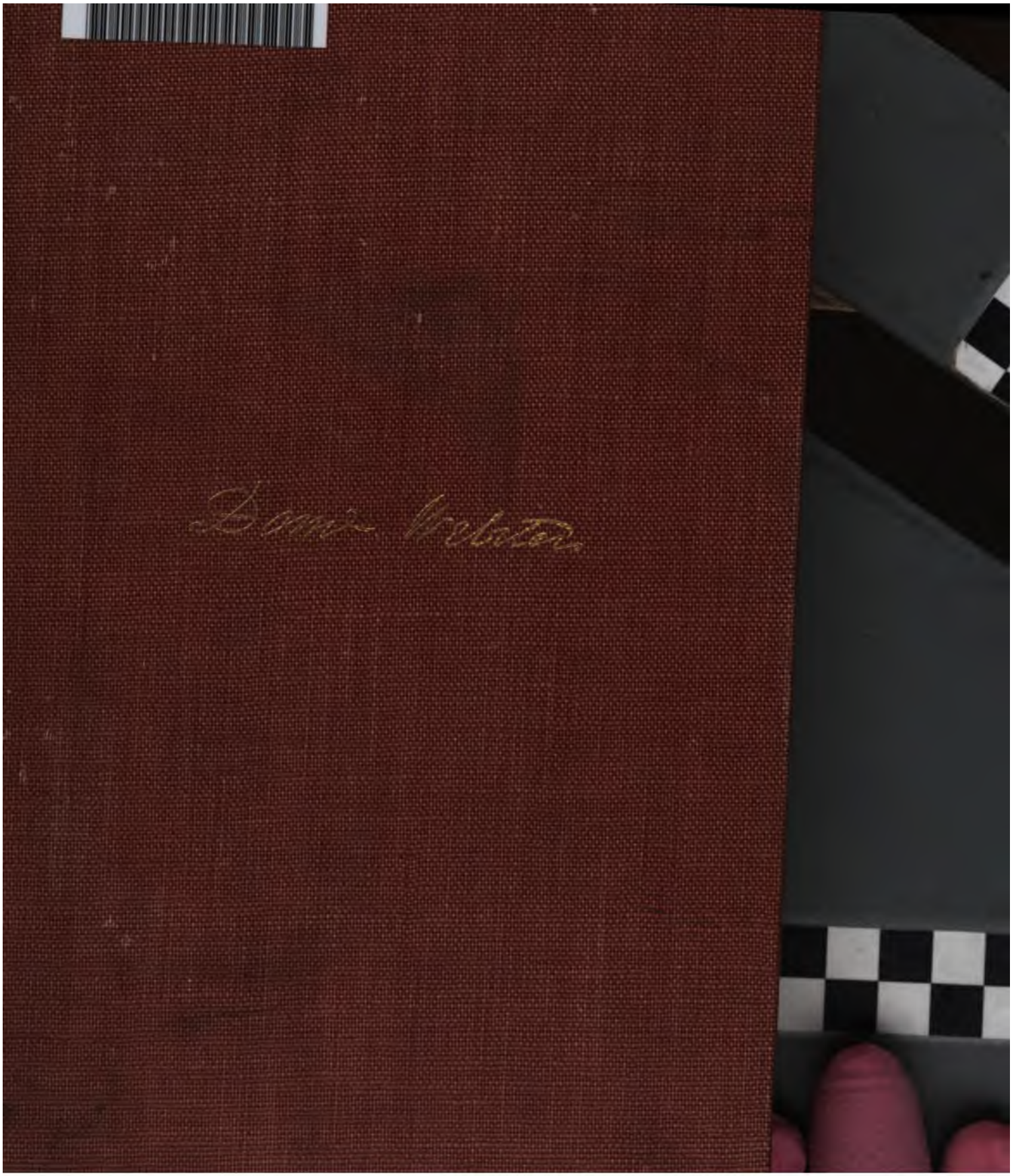

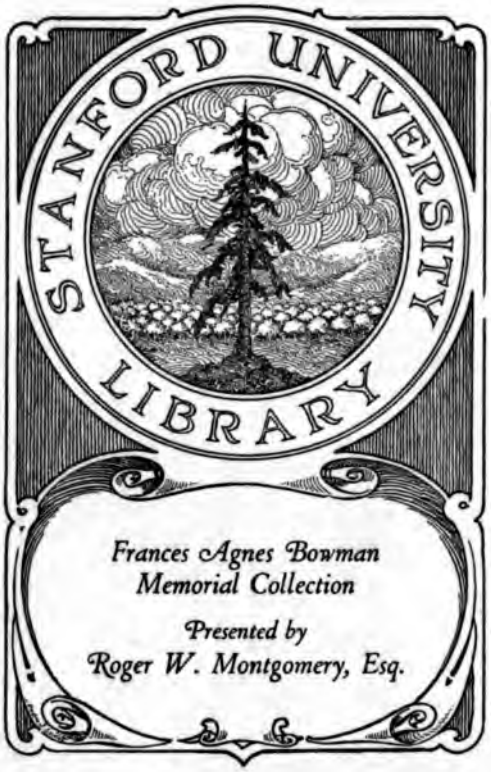

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CONTENTS

Speeches in Congress

PAGE

OBJECTS OF THE MEXICAN WAR 3

A Speech delivered in the Senate of the United States, on the 23d of March, 1848, on the Bill from the House of Representatives for raising a Loan of Sixteen Millions of Dollars.

EXCLUSION OF SLAVERY FROM THE TERRITORIES . . . 34

Remarks made in the Senate of the United States, on the 12th of August, 1848.

THE PANAMA RAILROAD 45

Remarks in the Senate, on the 31st of January, 1849, on the Motion submitted by Mr. Allen of Ohio, to postpone indefinitely the Bill making an Appropriation for the Transportation of the United States Mails by Railroad across the Isthmus of Panama, and further Remarks on the same Subject, made on the 6th of February.

THE CONSTITUTION AND THE UNION 56

A Speech delivered in the Senate of the United States, on the 7th of March, 1850.

TRIBUTE TO MR. CALHOUN 100

Remarks made in the Senate of the United States, on the 1st of April, 1850, on Occasion of the Decease of Hon. John Caldwell Calhoun, Senator from South Carolina.

TRIBUTE TO MR. ELMORE 103

Remarks made in the Senate of the United States, on the 30th of May, 1850, on Occasion of the Decease of Hon. Franklin Harper Elmore.

FUGITIVE SLAVE BILL 105

Remarks made on the 3d of June, 1850, in presenting to the Senate "A Bill amendatory of 'An Act respecting Fugitives from Justice, and Persons escaping from the Services of their Masters,'" approved February 12th, 1794.

PAGE

THE BOUNDARIES OF TEXAS 107
Remarks made in the Senate of the United States, on the 13th of June, 1850, on a Motion to strike out the Thirty-ninth Section of "The Compromise Bill," being the Section relative to the Boundaries of Texas.

THE COMPROMISE BILL 113
Remarks made in the Senate of the United States, on the 17th of June, 1850.

CALIFORNIA PUBLIC LANDS AND BOUNDARIES 118
Remarks made in the Senate of the United States, on the 27th of June, 1850, the Amendment moved by Mr. Soulé being under Consideration.

LAST ILLNESS AND DEATH OF GENERAL TAYLOR . . 138
Remarks made in the Senate of the United States, on the 9th and 10th of July, 1850.

THE COMPROMISE MEASURES 144
A Speech delivered in the Senate of the United States, on the 17th of July, 1850, on the Bill reported by the Committee of Thirteen, commonly called "The Compromise Bill."

Legal Arguments and Speeches to the Jury

DEFENCE OF THE KENNISTONS 173
An Argument addressed to the Jury, at the Term of the Supreme Judicial Court of Massachusetts held at Ipswich in April, 1817.

THE DARTMOUTH COLLEGE CASE 194
Argument before the Supreme Court of the United States, at Washington, on the 10th of March, 1818.

DEFENCE OF JUDGE JAMES PRESCOTT 234
Argument on the Impeachment of James Prescott, before the Senate of Massachusetts, on the 24th of April, 1821.

Appendix

NOTES FOR THE SPEECH OF MARCH 7, 1850 281

List of Illustrations

VOLUME TEN

Daniel Webster . . . . . *Frontispiece*

Engraved from a miniature by Miss Goodrich, owned by Mrs. E. Buckminster Lee

Mr. Webster's Residence in Somerset Street . . *Engraved Title*

From a photograph

James K. Polk . . . . . *Page* 60

From the painting by G. P. A. Healy, Corcoran Art Gallery, Washington

John C. Calhoun . . . . . " 100

From a photograph in the State House, Charleston, S. C.

Zachary Taylor . . . . . " 146

From the painting by G. P. A. Healy, Corcoran Art Gallery, Washington

Facsimile of the first four sheets of the original Notes for the Dartmouth College Argument . . . . " 194

From the manuscript in the Dartmouth College Library

Speeches in Congress

(CONTINUED)

Objects of the Mexican War*

On the 2d of February, 1848, the treaty called a "treaty of peace, friendship, limits, and settlement, between the United States of America and the Mexican Republic," was signed at Guadalupe Hidalgo. This treaty, with the advice and consent of the Senate, was ratified by the President of the United States on the 16th of March. In the mean time, a bill, introduced into the House of Representatives on the 18th of February, to authorize a loan of sixteen millions of dollars for the purpose of carrying on the war, passed through that house, and was considered in the Senate. Other war measures were considered and adopted by the two houses, after the signature and ratification of the treaty. On the 23d of March, the Sixteen Million Loan Bill being under consideration, Mr. Webster spoke as follows.

Mr. President, — On Friday a bill passed the Senate for raising ten regiments of new troops for the further prosecution of the war against Mexico; and we have been informed that that measure is shortly to be followed, in this branch of the legislature, by a bill to raise twenty regiments of volunteers for the same service. I was desirous of expressing my opinions against the object of these bills, against the supposed necessity which leads to their enactment, and against the general policy which they are apparently designed to promote. Circumstances personal to myself, but beyond my control, compelled me to forego, on that day, the execution of that design. The bill now before the Senate is a measure for raising money to meet the exigencies of the government, and to provide the means, as well

* A Speech delivered in the Senate of the United States, on the 23d of March, 1848, on the Bill from the House of Representatives for raising a Loan of Sixteen Millions of Dollars.

as for other things, for the pay and support of these thirty regiments.

Sir, the scenes through which we have passed, and are passing, here, are various. For a fortnight the world supposes we have been occupied with the ratification of a treaty of peace, and that within these walls, "the world shut out," notes of peace, and hopes of peace, nay, strong assurances of peace, and indications of peace, have been uttered to console and to cheer us. Sir, it has been over and over stated, and is public, that we have ratified a treaty, of course a treaty of peace, and, as the country has been led to suppose, not of an uncertain, empty, and delusive peace, but of real and substantial, a gratifying and an enduring peace, a peace which would stanch the wounds of war, prevent the further flow of human blood, cut off these enormous expenses, and return our friends, and our brothers, and our children, if they be yet living, from the land of slaughter, and the land of still more dismal destruction by climate, to our firesides and our arms.

Hardly have these halcyon notes ceased upon our ears, when, in resumed public session, we are summoned to fresh warlike operations; to create a new army of thirty thousand men for the further prosecution of the war; to carry the war, in the language of the President, still more dreadfully into the vital parts of the enemy, and to press home, by fire and sword, the claims we make, and the grounds which we insist upon, against our fallen, prostrate, I had almost said, our ignoble enemy. If we may judge from the opening speech of the honorable Senator from Michigan, and from other speeches that have been made upon this floor, there has been no time, from the commencement of the war, when it has been more urgently pressed upon us, not only to maintain, but to increase, our military means; not only to continue the war, but to press it still more vigorously than at present.

Pray, what does all this mean? Is it, I ask, confessed, then, is it confessed that we are no nearer a peace than we were when we snatched up this bit of paper called, or miscalled, a treaty, and ratified it? Have we yet to fight it out to the utmost, as if nothing pacific had intervened?

I wish, Sir, to treat the proceedings of this and of every department of the government with the utmost respect. The Con-

stitution of this government, and the exercise of its just powers in the administration of the laws under it, have been the cherished object of all my unimportant life. But, if the subject were not one too deeply interesting, I should say our proceedings here may well enough cause a smile. In the ordinary transaction of the foreign relations of this and of all other governments, the course has been to negotiate first, and to ratify afterwards. This seems to be the natural order of conducting intercourse between foreign states. We have chosen to reverse this order. We ratify first, and negotiate afterwards. We set up a treaty, such as we find it and choose to make it, and then send two ministers plenipotentiary to negotiate thereupon in the capital of the enemy. One would think, Sir, the ordinary course of proceeding much the juster; that to negotiate, to hold intercourse, and come to some arrangement, by authorized agents, and then to submit that arrangement to the sovereign authority to which these agents are responsible, would be always the most desirable method of proceeding. It strikes me that the course we have adopted is strange, is even *grotesque*. So far as I know, it is unprecedented in the history of diplomatic intercourse. Learned gentlemen on the floor of the Senate, interested to defend and protect this course, may, in their extensive reading, have found examples of it. I know of none.

Sir, we are in possession, by military power, of New Mexico and California, countries belonging hitherto to the United States of Mexico. We are informed by the President that it is his purpose to retain them, to consider them as territory fit to be attached to these United States of America; and our military operations and designs now before the Senate are to enforce this claim of the executive of the United States. We are to compel Mexico to agree that the part of her dominions called New Mexico, and that called California, shall be ceded to us. We are in possession, as is said, and she shall yield her title to us. This is the precise object of this new army of thirty thousand men. Sir, it is the identical object, in my judgment, for which the war was originally commenced, for which it has hitherto been prosecuted, and in furtherance of which this treaty is to be used, but as one means to bring about this general result; that general result depending, after all, on our own superior power,

and on the necessity of submitting to any terms which we may prescribe to fallen, fallen, fallen Mexico!

Sir, the members composing the other house, the more popular branch of the legislature, have all been elected since, I had almost said, the fatal, I will say the remarkable, events of the 11th and 13th days of May, 1846. The other house has passed a resolution affirming that "the war with Mexico was begun unconstitutionally and unnecessarily by the executive government of the United States." I concur in that sentiment; I hold that to be the most recent and authentic expression of the will and opinion of the majority of the people of the United States.

There is, Sir, another proposition, not so authentically announced hitherto, but, in my judgment, equally true and equally capable of demonstration; and that is, that this war was begun, has been continued, and is now prosecuted, for the great and leading purpose of the acquisition of new territory, out of which to bring new States, with their Mexican population, into this our Union of the United States.

If unavowed at first, this purpose did not remain unavowed long. However often it may be said that we did not go to war for conquest,

"credat Judæus Apella,
Non ego,"

yet the moment we get possession of territory we must retain it and make it our own. Now I think that this original object has not been changed, has not been varied. Sir, I think it exists in the eyes of those who originally contemplated it, and who began the war for it, as plain, as attractive to them, and from which they no more avert their eyes now than they did then or have done at any time since. We have compelled a treaty of cession; we know in our consciences that it is compelled. We use it as an instrument and an agency, in conjunction with other instruments and other agencies of a more formidable and destructive character, to enforce the cession of Mexican territory, to acquire territory for new States to be added to this Union. We know, every intelligent man knows, that there is no stronger desire in the breast of a Mexican citizen than to retain the territory which belongs to the republic. We know that the Mexican people will part with it, if part they must, with regret, with pangs of sorrow. That we know; we know it is all forced; and

therefore, because we know it must be forced, because we know that (whether the government, which we consider our creature, do or do not agree to it) the Mexican people will never accede to the terms of this treaty but through the impulse of absolute necessity, and the impression made upon them by absolute and irresistible force, therefore we purpose to overwhelm them with another army. We purpose to raise another army of ten thousand regulars and twenty thousand volunteers, and to pour them in and upon the Mexican people.

Now, Sir, I should be happy to agree, notwithstanding all this tocsin, and all this cry of all the Semproniuses in the land, that *their* "voices are still for war," — I should be happy to agree, and substantially I do agree, to the opinion of the Senator from South Carolina. I think I have myself uttered the sentiment, within a fortnight, to the same effect, that, after all, *the war with Mexico is substantially over*, that there can be no more fighting. In the present state of things, my opinion is that the people of this country will not sustain the war. They will not go for its heavy expenses; they will not find any gratification in putting the bayonet to the throats of the Mexican people. For my part, I hope the ten regiment bill will never become a law. Three weeks ago I should have entertained that hope with the utmost confidence; events instruct me to abate my confidence. I still *hope* it will not pass.

And here, I dare say, I shall be called by some a "Mexican Whig." The man who can stand up here and say that he hopes that what the administration projects, and the further prosecution of the war with Mexico requires, may not be carried into effect, must be an enemy to his country, or what gentlemen have considered the same thing, an enemy to the President of the United States, and to his administration and his party. He is a Mexican. Sir, I think very badly of the Mexican character, high and low, out and out; but names do not terrify me. Besides, if I have suffered in this respect, if I have rendered myself subject to the reproaches of these stipendiary presses, these hired abusers of the motives of public men, I have the honor, on this occasion, to be in very respectable company. In the reproachful sense of that term, I don't know a greater Mexican in this body than the honorable Senator from Michigan, the chairman of the Committee on Military Affairs.

Mr. Cass. Will the gentleman be good enough to explain what sort of a Mexican I am?

On the resumption of the bill in the Senate the other day, the gentleman told us that its principal object was to frighten Mexico; it would touch his humanity too much to hurt her! He would frighten her —

Mr. Cass. Does the gentleman affirm that I said that?

Yes; twice.

Mr. Cass. No, Sir, I beg your pardon, I did not say it. I did not say it would touch my humanity to hurt her.

Be it so.

Mr. Cass. Will the honorable Senator allow me to repeat my statement of the object of the bill? I said it was twofold: first, that it would enable us to prosecute the war, if necessary; and, second, that it would show Mexico we were prepared to do so; and thus, by its moral effect, would induce her to ratify the treaty.

The gentleman said, that the principal object of the bill was to frighten Mexico, and that this would be more humane than to harm her.

Mr. Cass. That 's true.

Well, Sir, the remarkable characteristic of that speech, that which makes it so much a Mexican speech, is, that the gentleman spoke it in the hearing of Mexico, as well as in the hearing of this Senate. We are accused here, because what we say is heard by Mexico, and Mexico derives encouragement from what is said here. And yet the honorable member comes forth and tells Mexico that the principal object of the bill is to frighten her! The words have passed along the wires; they are on the Gulf, and are floating away to Vera Cruz; and when they get there, they will signify to Mexico, "After all, ye good Mexicans, my principal object is to frighten you; and to the end that you may not be frightened too much, I have given you this indication of my purpose."

But, Sir, in any view of this case, in any view of the proper policy of this government, to be pursued according to any man's apprehension and judgment, where is the necessity for this augmentation, by regiments, of the military force of the country? I hold in my hand here a note, which I suppose to be substan-

tially correct, of the present military force of the United States. I cannot answer for its entire accuracy, but I believe it to be substantially according to fact. We have twenty-five regiments of regular troops, of various arms; if full, they would amount to 28,960 rank and file, and including officers to 30,296 men. These, with the exception of six or seven hundred men, are now all out of the United States and in field service in Mexico, or *en route* to Mexico. These regiments are not full; casualties and the climate have sadly reduced their numbers. If the recruiting service were now to yield ten thousand men, it would not more than fill up these regiments, so that every brigadier and colonel and captain should have his appropriate and his full command. Here is a call, then, on the country now for the enlistment of ten thousand men, to fill up the regiments in the foreign service of the United States.

I understand, Sir, that there is a report from General Scott; from General Scott, a man who has performed the most brilliant campaign on recent military record, a man who has warred against the enemy, warred against the climate, warred against a thousand unpropitious circumstances, and has carried the flag of his country to the capital of the enemy, honorably, proudly, *humanely*, to his own permanent honor, and the great military credit of his country: General Scott; and where is he? At Puebla! at Puebla, undergoing an inquiry before his inferiors in rank, and other persons without military rank; while the high powers he has exercised, and exercised with so much distinction, are transferred to another, I do not say to one unworthy of them, but to one inferior in rank, station, and experience to himself.

But General Scott reports, as I understand, that, in February, there were twenty thousand regular troops under his command and *en route*, and we have thirty regiments of volunteers for the war. If full, this would make thirty-four thousand men, or, including officers, thirty-five thousand. So that, if the regiments were full, there is at this moment a number of troops, regular and volunteer, of not less than fifty-five or sixty thousand men, including recruits on the way. And with these twenty thousand men in the field, of regular troops, there were also ten thousand volunteers; making, of regulars and volunteers under General Scott, thirty thousand men. The Senator from Michigan knows these things better than I do, but I believe this is very

nearly the fact. Now all these troops are regularly officered; there is no deficiency, in the line or in the staff, of officers. They are all full. Where there is any deficiency it consists of men.

Now, Sir, there may be a plausible reason for saying that there is difficulty in recruiting at home for the supply of deficiency in the volunteer regiments. It may be said that volunteers choose to enlist under officers of their own knowledge and selection; they do not incline to enlist as individual volunteers, to join regiments abroad, under officers of whom they know nothing. There may be something in that; but pray what conclusion does it lead to, if not to this, that all these regiments must moulder away, by casualties or disease, until the privates are less in number than the officers themselves.

But, however that may be with respect to volunteers, in regard to recruiting for the regular service, in filling up the regiments by pay and bounties according to existing laws, or new laws, if new ones are necessary, there is no reason on earth why we should now create five hundred new officers, for the purpose of getting ten thousand more men. The officers are already there; in that respect there is no deficiency. All that is wanted is men, and there is place for the men; and I suppose no gentleman, here or elsewhere, thinks that recruiting will go on faster than would be necessary to obtain men to fill up the deficiencies in the regiments abroad.

But now, Sir, what do we want of a greater force than we have in Mexico? I am not saying, What do we want of a force greater than we can supply? but What is the object of bringing these new regiments into the field? What do we propose? There is no army to fight. I suppose there are not five hundred men under arms in any part of Mexico; probably not half that number, except in one place. Mexico is prostrate. It is not the government that resists us. Why, it is notorious that the government of Mexico is on our side, that it is an instrument by which we hope to establish such a peace, and accomplish such a treaty, as we like. As far as I understand the matter, the government of Mexico owes its life and breath and being to the support of our arms, and to the hope, I do not say how inspired, that somehow or other, and at no distant period, she will have the pecuniary means of carrying it on, from our three millions or our twelve millions, or from some of our other millions.

What do we propose to do, then, with these thirty regiments which it is designed to throw into Mexico? Are we going to cut the throats of her people? Are we to thrust the sword deeper and deeper into the "vital parts" of Mexico? What is it proposed to do? Sir, I can see no object in it; and yet, while we are pressed and urged to adopt this proposition to raise ten and twenty regiments, we are told, and the public is told, and the public believes, that we are on the verge of a safe and an honorable peace. Every one looks every morning for tidings of a confirmed peace, or of confirmed hopes of peace. We gather it from the administration, and from every organ of the administration from Dan to Beersheba. And yet warlike preparations, the incurring of expenses, the imposition of new charges upon the treasury, are pressed here, as if peace were not in all our thoughts, at least not in any of our expectations.

Now, Sir, I propose to hold a plain talk to-day; and I say that, according to my best judgment, the object of the bill is patronage, office, the gratification of friends. This very measure for raising ten regiments creates four or five hundred officers; colonels, subalterns, and not them only, for for all these I feel some respect, but there are also paymasters, contractors, persons engaged in the transportation service, commissaries, even down to sutlers, *et id genus omne*, people who handle the public money without facing the foe, one and all of whom are true descendants, or if not, true representatives, of Ancient Pistol, who said,

> "I shall sutler be
> Unto the camp, and profits will accrue."

Sir, I hope, with no disrespect for the applicants, and the aspirants, and the patriots (and among them are some sincere patriots) who would fight for their country, and those others who are not ready to fight, but who are willing to be paid, with due respect for all of them according to their several degrees and their merits, I hope they will all be disappointed. I hope that, as the pleasant season advances, the whole may find it for their interest to place themselves, of mild mornings, in the cars, and take their destination to their respective places of honorable private occupation and of civil employment. They have my good wishes that they may find the way to their homes from the Avenue and the Capitol, and from the purlieus of the President's

house, in good health themselves, and that they may find their families all very happy to receive them.

But, Sir, to speak more seriously, this war was waged for the object of creating new States, on the southern frontier of the United States, out of Mexican territory, and with such population as could be found resident thereupon. I have opposed this object. I am against all accessions of territory to form new States. And this is no matter of sentimentality, which I am to parade before mass meetings or before my constituents at home. It is not a matter with me of declamation, or of regret, or of expressed repugnance. It is a matter of firm, unchangeable purpose. I yield nothing to the force of circumstances that have occurred, or that I can consider as likely to occur. And therefore I say, Sir, that, if I were asked to-day whether, for the sake of peace, I would take a treaty for adding two new States to the Union on our southern border, I would say, *No!* distinctly, No! And I wish every man in the United States to understand that to be my judgment and my purpose.

I said upon our *southern* border, because the present proposition takes that locality. I would say the same of the western, the northeastern, or of any other border. I resist to-day, and for ever, and to the end, any proposition to add any foreign territory, south or west, north or east, to the States of this Union, as they are constituted and held together under the Constitution. I do not want the colonists of England on the north; and as little do I want the population of Mexico on the south. I resist and reject all, and all with equal resolution. Therefore I say, that, if the question were put to me to-day, whether I would take peace under the present state of the country, distressed as it is, during the existence of a war odious as this is, under circumstances so afflictive as now exist to humanity, and so disturbing to the business of those whom I represent, I say still, if it were put to me whether I would have peace, with new States, I would say, No! no! And that because, Sir, in my judgment, there is no necessity of being driven into that dilemma. Other gentlemen think differently. I hold no man's conscience; but I mean to make a clean breast of it myself; and I protest that I see no reason, I believe there is none, why we cannot obtain as safe a peace, as honorable and as prompt a peace, without territory as with it. The two things are separable. There is no

necessary connection between them. Mexico does not wish us to take her territory, while she receives our money. Far from it. She yields her assent, if she yields it at all, reluctantly, and we all know it. It is the result of force, and there is no man here who does not know that. And let me say, Sir, that, if this Trist paper shall finally be rejected in Mexico, it is most likely to be because those who under our protection hold the power there cannot persuade the Mexican Congress or people to agree to this cession of territory. The thing most likely to break up what we now expect to take place is the repugnance of the Mexican people to part with their territory. They would prefer to keep their territory, and that we should keep our money; as I prefer we should keep our money, and they their territory. We shall see. I pretend to no powers of prediction. I do not know what may happen. The times are full of strange events. But I think it certain that, if the treaty which has gone to Mexico shall fail to be ratified, it will be because of the aversion of the Mexican Congress, or the Mexican people, to cede the territory, or any part of it, belonging to their republic.

I have said that I would rather have no peace for the present, than have a peace which brings territory for new States; and the reason is, that we shall get peace as soon without territory as with it, more safe, more durable, and vastly more honorable to us, the great republic of the world.

But we hear gentlemen say, We must have some territory, the people demand it. I deny it; at least, I see no proof of it whatever. I do not doubt that there are individuals of an enterprising character, disposed to emigrate, who know nothing about New Mexico but that it is far off, and nothing about California but that it is still farther off, who are tired of the dull pursuits of agriculture and of civil life; that there are hundreds and thousands of such persons to whom whatsoever is new and distant is attractive. They feel the spirit of borderers, and the spirit of a borderer, I take it, is to be tolerably contented with his condition where he is, until somebody goes to regions beyond him; and then he is all eagerness to take up his traps and go still farther than he who has thus got in advance of him. With such men the desire to emigrate is an irresistible passion. At least so thought that sagacious observer of human nature, M. de Talleyrand, when he travelled in this country in 1794.

But I say I do not find anywhere any considerable and respectable body of persons who want more territory, and such territory. Twenty-four of us last year in this house voted against the prosecution of the war for territory, because we did not want it, both Southern and Northern men. I believe the Southern gentlemen who concurred in that vote found themselves, even when they had gone against what might be supposed to be local feelings and partialities, sustained on the general policy of not seeking territory, and by the acquisition of territory bringing into our politics certain embarrassing and embroiling questions and considerations. I do not learn that they suffered from the advocacy of such a sentiment. I believe they were supported in it; and I believe that through the greater part of the South, and even of the Southwest, there is no prevalent opinion in favor of acquiring territory, and such territory, and of the augmentation of our population by such an accession. And such, I need not say, is, if not the undivided, the preponderating sentiment of all the North.

But it is said we must take territory for the sake of peace. We must take territory. It is the will of the President. If we do not now take what he offers, we may fare worse. Mr. Polk will take no less, that he is fixed upon. He is immovable. He — has — put — down — his — foot! Well, Sir, he put it down upon "fifty-four forty," but it did n't stay. I speak of the President, as of all Presidents, without disrespect. I know of no reason why his opinion and his will, his purpose, declared to be final, should control us, any more than our purpose, from equally conscientious motives, and under as high responsibilities, should control him. We think he is firm, and will not be moved. I should be sorry, Sir, very sorry, indeed, that we should entertain more respect for the firmness of the individual at the head of the government than we entertain for our own firmness. He stands out against us. Do we fear to stand out against him? For one, I do not. It appears to me to be a slavish doctrine. For one, I am willing to meet the issue, and go to the people all over this broad land. Shall we take peace without new States, or refuse peace without new States? I will stand upon that, and trust the people. And I do that because I think it right, and because I have no distrust of the people. I am not unwilling to put it to their sovereign decision and arbitration. I hold this to be a

question vital, permanent, elementary, in the future prosperity of the country and the maintenance of the Constitution; and I am willing to trust that question to the people. I prefer that it should go to them, because, if what I take to be a great constitutional principle, or what is essential to its maintenance, is to be broken down, let it be the act of the people themselves; it shall never be my act. I, therefore, do not distrust the people. I am willing to take their sentiment, from the Gulf to the British Provinces, and from the ocean to the Missouri: Will you continue the war for territory, to be purchased, after all, at an enormous price, a price a thousand times the value of all its purchases, or take peace, contenting yourselves with the honor we have reaped by the military achievements of the army? Will you take peace without territory, and preserve the integrity of the Constitution of the country? I am entirely willing to stand upon that question. I will therefore take the issue: *Peace, with no new States, keeping our own money ourselves, or war till new States shall be acquired, and vast sums paid.* That is the true issue. I am willing to leave that before the people and to the people, because it is a question for themselves. If they support me and think with me, very well. If otherwise, if they will have territory and add new States to the Union, let them do so; and let them be the artificers of their own fortune, for good or for evil.

But, Sir, we tremble before executive power. The truth cannot be concealed. We tremble before executive power! Mr. Polk will take no less than this. If we do not take this, the king's anger may kindle, and he will give us what is worse.

But now, Sir, who and what is Mr. Polk? I speak of him with no manner of disrespect. I mean, thereby, only to ask who and what is the President of the United States for the current moment. He is in the last year of his administration. Formally, officially, it can only be drawn out till the fourth of March, while really and substantially we know that two short months will, or may, produce events that will render the duration of that official term of very little importance. We are on the eve of a Presidential election. That machinery which is employed to collect public opinion or party opinion will be put in operation two months hence. We shall see its result. It may be that the present incumbent of the Presidential office will be again pre-

sented to his party friends and admirers for their suffrages for the next Presidential term. I do not say how probable or improbable this is. Perhaps it is not entirely probable. Suppose this not to be the result, what then? Why, then Mr. Polk becomes as absolutely insignificant as any respectable man among the public men of the United States. Honored in private life, valued for his private character, respectable, never eminent, in public life, he will, from the moment a new star arises, have just as little influence as you or I; and, so far as I am concerned, that certainly is little enough.

Sir, political partisans, and aspirants, and office-seekers are not sunflowers. They do not

> "turn to their god when he sets
> The same look which they turned when he rose."

No, Sir, if the respectable gentleman now at the head of the government be nominated, there will be those who will commend his consistency, who will be bound to maintain it, for the interest of his party friends will require it. It will be done. If otherwise, who is there in the whole length and breadth of the land that will care for the consistency of the present incumbent of the office? There will then be new objects. "Manifest destiny" will have pointed out some other man. Sir, the eulogies are now written, the commendations are already elaborated. I do not say every thing fulsome, but every thing panegyrical, has already been written out, with *blanks* for names, to be filled when the convention shall adjourn. When "manifest destiny" shall be unrolled, all these strong panegyrics, wherever they may light, made beforehand, laid up in pigeon-holes, studied, framed, emblazoned, and embossed, will all come out; and then there will be found to be somebody in the United States whose merits have been strangely overlooked, marked out by Providence, a kind of miracle, while all will wonder that nobody ever thought of him before, as a fit, and the only fit, man to be at the head of this great republic!

I shrink not, therefore, from any thing that I feel to be my duty, from any apprehension of the importance and imposing dignity, and the power of will, ascribed to the present incumbent of office. But I wish we possessed that power of will. I wish we had that firmness. Yes, Sir, I wish we had adherence. I

wish we could gather something from the spirit of our brave forces, who have met the enemy under circumstances most adverse and have stood the shock. I wish we could imitate Zachary Taylor in his bivouac on the field of Buena Vista. He said he "would remain for the night; he would feel the enemy in the morning, and try his position." I wish, before we surrender, we could make up *our* minds to "*feel* the enemy, and try his position," and I think we should find him, as Taylor did, under the early sun, on his way to San Luis Potosi. That is my judgment.

But, Sir, I come to the all-absorbing question, more particularly, of the creation of new States.

Some years before I entered public life, Louisiana had been obtained under the treaty with France. Shortly after, Florida was obtained under the treaty with Spain. These two countries were situated on our frontier, and commanded the outlets of the great rivers which flow into the Gulf. As I have had occasion to say, in the first of these instances, the President of the United States* supposed that an amendment of the Constitution was required. He acted upon that supposition. Mr. Madison was Secretary of State, and, upon the suggestion of the President, proposed that the proper amendment to the Constitution should be submitted, to bring Louisiana into the Union. Mr. Madison drew it, and submitted it to Mr. Adams, as I have understood. Mr. Madison did not go upon any general idea that new States might be admitted; he did not proceed to a general amendment of the Constitution in that respect. The amendment which he proposed and submitted to Mr. Adams was a simple declaration, by a new article, that "the Province of Louisiana is hereby declared to be part and parcel of the United States." But public opinion, seeing the great importance of the acquisition, took a turn favorable to the affirmation of the power. The act was acquiesced in, and Louisiana became a part of the Union, without any amendment of the Constitution.

On the example of Louisiana, Florida was admitted.

Now, Sir, I consider those transactions as passed, settled, legalized. There they stand as matters of political history.

* Mr. Jefferson.

They are facts against which it would be idle at this day to contend.

My first agency in matters of this kind was upon the proposition for admitting Texas into this Union. That I thought it my duty to oppose, upon the general ground of opposing all formation of new States out of foreign territory, and, I may add, and I ought to add in justice, of States in which slaves were to be represented in the Congress of the United States. I was opposed to this on the ground of its inequality. It happened to me, Sir, to be called upon to address a political meeting in New York, in 1837, soon after the recognition of Texan independence. I state now, Sir, what I have often stated before, that no man, from the first, has been a more sincere well-wisher to the government and the people of Texas than myself. I looked upon the achievement of their independence in the battle of San Jacinto as an extraordinary, almost a marvellous, incident in the affairs of mankind. I was among the first disposed to acknowledge her independence. But from the first, down to this moment, I have opposed, as far as I was able, the annexation of new States to this Union. I stated my reasons on the occasion now referred to, in language which I have now before me, and which I beg to present to the Senate.

Mr. Webster here read the passage from his speech at Niblo's Saloon, New York, which will be found in the second volume of this work, pages 205 to 207, beginning, "But it cannot be disguised, gentlemen, that a desire, or an intention, is already manifested to annex Texas to the United States."

Well, Sir, for a few years I held a position in the executive administration of the government. I left the Department of State in 1843, in the month of May. Within a month after, another (an intelligent gentleman, for whom I cherished a high respect, and who came to a sad and untimely end) had taken my place, I had occasion to know, not officially, but from circumstances, that the annexation of Texas was taken up by Mr. Tyler's administration as an administration measure. It was pushed, pressed, insisted on; and I believe the honorable gentleman to whom I have referred* had something like a passion for the accomplishment of this purpose. And I am afraid that

* Mr. Upshur.

the President of the United States * at that time suffered his ardent feelings not a little to control his more prudent judgment. At any rate, I saw, in 1843, that annexation had become a purpose of the administration. I was not in Congress nor in public life. But, seeing this state of things, I thought it my duty to admonish the country, so far as I could, of the existence of that purpose. There are gentlemen at the North, many of them, there are gentlemen now in the Capitol, who know, that in the summer of 1843, being fully persuaded that this purpose was embraced with zeal and determination by the executive department of the government of the United States, I thought it my duty, and asked them to concur with me in the attempt, to make that purpose known to the country. I conferred with gentlemen of distinction and influence. I proposed means for exciting public attention to the question of annexation, before it should have become a party question; for I had learned that, when any topic becomes a party question, it is in vain to argue upon it.

But the optimists, and the quietists, and those who said, All things are well, and let all things alone, discouraged, discountenanced, and repressed any such effort. The North, they said, could take care of itself; the country could take care of itself, and would not sustain Mr. Tyler in his project of annexation. When the time should come, they said, the power of the North would be felt, and would be found sufficient to resist and prevent the consummation of the measure. And I could now refer to paragraphs and articles in the most respectable and leading journals of the North, in which it was attempted to produce the impression that there was no danger; there could be no addition of new States, and men need not alarm themselves about that.

I was not in Congress, Sir, when the preliminary resolutions, providing for the annexation of Texas, passed. I only know that, up to a very short period before the passage of those resolutions, the impression in that part of the country of which I have spoken was, that no such measure could be adopted. But I have found in the course of thirty years' experience, that whatever measures the executive government may embrace and push are

* Mr. Tyler.

quite likely to succeed in the end. There is always a giving way somewhere. The executive government acts with uniformity, with steadiness, with entire unity of purpose. And sooner or later, often enough, and, according to my construction of our history, quite too often, it effects its purposes. In this way it becomes the predominating power of the government.

Well, Sir, just before the commencement of the present administration, the resolutions for the annexation of Texas were passed in Congress. Texas complied with the provisions of those resolutions, and was here, or the case was here, on the 22d day of December, 1845, for her final admission into the Union, as one of the States. I took occasion then to say, that I hoped I had shown all proper regard for Texas; that I had been certainly opposed to annexation; that, if I should go over the whole matter again, I should have nothing new to add; that I had acted, all along, under the unanimous declaration of all parties, and of the legislature of Massachusetts; that I thought there must be some limit to the extent of our territories, and that I wished this country should exhibit to the world the example of a powerful republic, without greediness and hunger of empire. And I added, that while I held, with as much faithfulness as any citizen of the country, to all the original arrangements and compromises of the Constitution under which we live, I never could, and I never should, bring myself to be in favor of the admission of any States into the Union as slave-holding States; and I might have added, any States at all, to be formed out of territories not now belonging to us.

Now, as I have said, in all this I acted under the resolutions of the State of Massachusetts, certainly concurrent with my own judgment, so often repeated, and reaffirmed by the unanimous consent of all men of all parties, that I could not well go through the series, pointing out, not only the impolicy, but the unconstitutionality, of such annexation. If a State proposes to come into the Union, and to come in as a slave State, then there is an augmentation of the inequality in the representation of the people; an inequality already existing, with which I do not quarrel, and which I never will attempt to alter, but shall preserve as long as I have a vote to give, or any voice in this government, because it is a part of the original compact. Let it

stand. But then there is another consideration of vastly more general importance even than that; more general, because it affects all the States, free and slave-holding; and it is, that, if States formed out of territories thus thinly populated come into the Union, they necessarily and inevitably break up the relation existing between the two branches of the government, and destroy its balance. They break up the intended relation between the Senate and the House of Representatives. If you bring in new States, any State that comes in must have two Senators. She may come in with fifty or sixty thousand people, or more. You may have, from a particular State, more Senators than you have Representatives. Can any thing occur to disfigure and derange the form of government under which we live more signally than that? Here would be a Senate bearing no proportion to the people, out of all relation to them, by the addition of new States; from some of them only one Representative, perhaps, and two Senators, whereas the larger States may have ten, fifteen, or even thirty Representatives, and but two Senators. The Senate, augmented by these new Senators coming from States where there are few people, becomes an odious oligarchy. It holds power without any adequate constituency. Sir, it is but "borough-mongering" upon a large scale. Now, I do not depend upon theory; I ask the Senate and the country to look at facts, to see where we were when we made our departure three years ago, and where we now are; and I leave it to the imagination to conjecture where we shall be.

We admitted Texas; one State for the present; but, Sir, if you refer to the resolutions providing for the annexation of Texas, you find a provision that it shall be in the power of Congress hereafter to make four new States out of Texan territory. Present and prospectively, five new States, with ten Senators, may come into the Union out of Texas. Three years ago we did this; we now propose to make two States. Undoubtedly, if we take, as the President recommends, New Mexico and California, there must then be four new Senators. We shall then have provided, in these territories out of the United States along our southern borders, for the creation of States enough to send fourteen Senators into this chamber. Now, what will be the relation between these Senators and the people they represent, or the States from which they come? I do not understand that there is any very

accurate census of Texas. It is generally supposed to contain one hundred and fifty thousand persons. I doubt whether it contains above one hundred thousand.

Mr. Mangum. It contains one hundred and forty-nine thousand.

My honorable friend on my left says, a hundred and forty-nine thousand. I put it down, then, one hundred and fifty thousand. Well, Sir, Texas is not destined, probably, to be a country of dense population. We will suppose it to have at the present time a population of near one hundred and fifty thousand. New Mexico may have sixty or seventy thousand inhabitants; say seventy thousand. In California, there are not supposed to be above twenty-five thousand men; but undoubtedly, if this territory should become ours, persons from Oregon, and from our Western States, will find their way to San Francisco, where there is some good land, and we may suppose they will shortly amount to sixty or seventy thousand. We will put them down at seventy thousand. Then the whole territory in this estimate, which is as high as any man puts it, will contain two hundred and ninety thousand persons, and they will send us, whenever we ask for them, fourteen Senators; a population less than that of the State of Vermont, and not the eighth part of that of New York. Fourteen Senators, and not as many people as Vermont! and no more people than New Hampshire! and not so many people as the good State of New Jersey!

But then, Sir, Texas claims to the line of the Rio Grande, and if it be her true line, why then of course she absorbs a considerable part, nay, the greater part, of the population of what is now called New Mexico. I do not argue the question of the true southern or western line of Texas; I only say, that it is apparent to every body who will look at the map, and learn any thing of the matter, that New Mexico cannot be divided by this river, the Rio Grande, which is a shallow, fordable, insignificant stream, creeping along through a narrow valley, at the base of enormous mountains. New Mexico must remain together; it must be a State with its seventy thousand people, and so it will be; and so will California.

But then, Sir, suppose Texas to remain a unit, and but one State for the present; still we shall have three States, Texas, New Mexico, and California. We shall have six Senators, then,

for less than three hundred thousand people. We shall have as many Senators for three hundred thousand people in that region as we have for New York, Pennsylvania, and Ohio, with four or five millions of people; and that is what we call an equal representation! Is not this enormous? Have gentlemen considered this? Have they looked at it? Are they willing to look it in the face, and then say they embrace it? I trust, Sir, the people will look at it and consider it. And now let me add, that this disproportion can never be diminished; it must remain for ever. How are you going to diminish it? Why, here is Texas, with a hundred and forty-nine thousand people, with one State. Suppose that population should flow into Texas, where will it go? Not to any dense point, but to be spread over all that region, in places remote from the Gulf, in places remote from what is now the capital of Texas; and therefore, as soon as there are in other portions of Texas people enough within our common construction of the Constitution and our practice in respect to the admission of States, my honorable friend from Texas* will have a new State, and I have no doubt he has chalked it out already.

As to New Mexico, its population is not likely to increase. It is a settled country; the people living along in the bottom of the valley on the sides of a little stream, a garter of land only on one side and the other, filled by coarse landholders and miserable *peons*. It can sustain, not only under this cultivation, but under any cultivation that our American race would ever submit to, no more people than are there now. There will, then, be two Senators for sixty thousand inhabitants in New Mexico to the end of our lives and to the end of the lives of our children.

And how is it with California? We propose to take California, from the forty-second degree of north latitude down to the thirty-second. We propose to take ten degrees along the coast of the Pacific. Scattered along the coast for that great distance are settlements and villages and ports; and in the rear all is wilderness and barrenness, and Indian country. But if, just about San Francisco, and perhaps Monterey, emigrants enough should settle to make up one State, then the people five hun-

* Mr. Rusk.

dred miles off would have another State. And so this disproportion of the Senate to the people will go on, and must go on, and we cannot prevent it.

I say, Sir, that, according to my conscientious conviction, we are now fixing on the Constitution of the United States, and its frame of government, a monstrosity, a disfiguration, an enormity! Sir, I hardly dare trust myself. I don't know but I may be under some delusion. It may be the weakness of my eyes that forms this monstrous apparition. But, if I may trust myself, if I can persuade myself that I am in my right mind, then it does appear to me that we in this Senate have been and are acting, and are likely to be acting hereafter, and immediately, a part which will form the most remarkable epoch in the history of our country. I hold it to be enormous, flagrant, an outrage upon all the principles of popular republican government, and on the elementary provisions of the Constitution under which we live, and which we have sworn to support.

But then, Sir, what relieves the case from this enormity? What is our reliance? Why, it is that we stipulate that these new States shall only be brought in at a suitable time. And pray, what is to constitute the suitableness of time? Who is to judge of it? I tell you, Sir, that suitable time will come when the preponderance of party power here makes it necessary to bring in new States. Be assured it will be a suitable time when votes are wanted in this Senate. We have had some little experience of that. Texas came in at a "suitable time," a *very* suitable time! Texas was finally admitted in December, 1845. My friend near me here, for whom I have a great regard, and whose acquaintance I have cultivated with pleasure,* took his seat in March, 1846, with his colleague. In July, 1846, these two Texan votes turned the balance in the Senate, and overthrew the tariff of 1842, in my judgment the best system of revenue ever established in this country. Gentlemen on the opposite side think otherwise. They think it fortunate. They think that was a suitable time, and they mean to take care that other times shall be equally suitable. I understand it perfectly well. That is the difference of opinion between me and these honorable gentlemen. To their policy, their objects, and their

* Mr. Rusk.

purposes the time was *suitable*, and the aid was efficient and decisive.

Sir, in 1850 perhaps a similar question may be agitated here. It is not likely to be before that time, but agitated it will be then, unless a change in the administration of the government shall take place. According to my apprehension, looking at general results as flowing from our established system of commerce and revenue, in two years from this time we shall probably be engaged in a new revision of our system: in the work of establishing, if we can, a tariff of specific duties; of protecting, if we can, our domestic industry and the manufactures of the country; in the work of preventing, if we can, the overwhelming flood of foreign importations. Suppose that to be part of the future: that would be exactly the "suitable time," if necessary, for two Senators from New Mexico to make their appearance here!

But, again, we hear another halcyon, soothing tone, which quiets none of my alarms, assuages none of my apprehensions, commends me to my nightly rest with no more resignation. And that is, the plea that we may trust the popular branch of the legislature, we may look to the House of Representatives, to the Northern and Middle States and even the sound men of the South, and trust them to take care that States be not admitted sooner than they should be, or for party purposes. I am compelled, by experience, to distrust all such reliances. If we cannot rely on ourselves, when we have the clear constitutional authority competent to carry us through, and the motives intensely powerful, I beg to know how we can rely on others? Have we more reliance on the patriotism, the firmness, of others, than on our own?

Besides, experience shows us that things of this sort may be *sprung* upon Congress and the people. It was so in the case of Texas. It was so in the Twenty-eighth Congress. The members of that Congress were not chosen to decide the question of annexation or no annexation. They came in on other grounds, political and party, and were supported for reasons not connected with that question. What then? The administration sprung upon them the question of annexation. It obtained a *snap* judgment upon it, and carried the measure of annexa-

tion. That is indubitable, as I could show by many instances, of which I shall state only one.

Four gentlemen from the State of Connecticut were elected before the question arose, belonging to the dominant party. They had not been here long before they were committed to annexation; and when it was known in Connecticut that annexation was in contemplation, remonstrances, private, public, and legislative, were uttered, in tones that any one could hear who could hear thunder. Did they move them? Not at all. Every one of them voted for annexation! The election came on, and they were turned out, to a man. But what did those care who had had the benefit of their votes? Such agencies, if it be not more proper to call them such instrumentalities, retain respect no longer than they continue to be useful.

Sir, we take New Mexico and California; who is weak enough to suppose that there is an end? Don't we hear it avowed every day, that it would be proper also to take Sonora, Tamaulipas, and other provinces of Northern Mexico? Who thinks that the hunger for dominion will stop here of itself? It is said, to be sure, that our present acquisitions will prove so lean and unsatisfactory, that we shall seek no further. In my judgment, we may as well say of a rapacious animal, that, if he has made one unproductive hunt, he will not try for a better foray.

But further. There are some things one can argue against with temper, and submit to, if overruled, without mortification. There are other things that seem to affect one's consciousness of being a sensible man, and to imply a disposition to impose upon his common sense. And of this class of topics, or pretences, I have never heard of any thing, and I cannot conceive of any thing, more ridiculous in itself, more absurd, and more affrontive to all sober judgment, than the cry that we are getting indemnity by the acquisition of New Mexico and California. I hold they are not worth a dollar; and we pay for them vast sums of money! We have expended, as every body knows, large treasures in the prosecution of the war; and now what is to constitute this indemnity? What do gentlemen mean by it? Let us see a little how this stands. We get a country; we get, in the first instance, a cession, or an acknowledgment of boundary, (I care not which way you state it,) of the country between the Nueces and the Rio Grande. What this country is

appears from a publication made by a gentleman in the other house.* He speaks of the country in the following manner: —

"The country from the Nueces to the valley of the Rio Grande is poor, sterile, sandy, and barren, with not a single tree of any size or value on our whole route. The only tree which we saw was the musquit-tree, and very few of these. The musquit is a small tree, resembling an old and decayed peach-tree. The whole country may be truly called a perfect waste, uninhabited and uninhabitable. There is not a drop of running water between the two rivers, except in the two small streams of San Salvador and Santa Gertrudis, and these only contain water in the rainy season. Neither of them had running water when we passed them. The *chaparral* commences within forty or fifty miles of the Rio Grande. This is poor, rocky, and sandy; covered with prickly pear, thistles, and almost every sticking thing, constituting a thick and perfectly impenetrable undergrowth. For any useful or agricultural purpose, the country is not worth a *sous*.

"So far as we were able to form any opinion of this desert upon the other routes which had been travelled, its character, everywhere between the two rivers, is pretty much the same. We learned that the route pursued by General Taylor, south of ours, was through a country similar to that through which we passed; as also was that travelled by General Wool from San Antonio to Presidio on the Rio Grande. From what we both saw and heard, the whole command came to the conclusion which I have already expressed, that it was worth *nothing*. I have no hesitation in saying, that I would not hazard the life of one valuable and useful man for every foot of land between San Patricio and the valley of the Rio Grande. The country is not now, and can never be, of the *slightest value*."

Major Gaines has been there lately. He is a competent observer. He is contradicted by nobody. And so far as that country is concerned, I take it for granted that it is not worth a dollar.

Now of New Mexico, what of that? Forty-nine fiftieths, at least, of the whole of New Mexico, are a barren waste, a desert plain of mountain, with no wood, no timber. Little fagots for lighting a fire are carried thirty or forty miles on mules. There is no fall of rain there as in temperate climates. It is Asiatic in scenery altogether: enormously high mountains, running up some of them ten thousand feet, with narrow valleys

* Major Gaines.

at their bases, through which streams sometimes trickle along. A strip, a garter, winds along, through which runs the Rio Grande, from far away up in the Rocky Mountains to latitude 33°, a distance of three or four hundred miles. There these sixty thousand persons reside. In the mountains on the right and left are streams which, obeying the natural tendency as tributaries, should flow into the Rio Grande, and which, in certain seasons, when rains are abundant, do, some of them, actually reach the Rio Grande; while the greater part always, and all for the greater part of the year, never reach an outlet to the sea, but are absorbed in the sands and desert plains of the country. There is no cultivation there. There is cultivation where there is artificial watering or irrigation, and nowhere else. Men can live only in the narrow valley, and in the gorges of the mountains which rise round it, and not along the course of the streams which lose themselves in the sands.

Now there is no public domain in New Mexico, not a foot of land, to the soil of which we shall obtain title. Not an acre becomes ours when the country becomes ours. More than that, the country is as full of people, such as they are, as it is likely to be. There is not the least thing in it to invite settlement from the fertile valley of the Mississippi. And I undertake to say, there would not be two hundred families of persons who would emigrate from the United States to New Mexico, for agricultural purposes, in fifty years. They could not live there. Suppose they were to cultivate the lands; they could only make them productive in a slight degree by irrigation or artificial watering. The people there produce little, and live on little. That is not the characteristic, I take it, of the people of the Eastern or of the Middle States, or of the Valley of the Mississippi. They produce a good deal, and they consume a good deal.

Again, Sir, New Mexico is not like Texas. I have hoped, and I still hope, that Texas will be filled up from among ourselves, not with Spaniards, not with *peons;* that its inhabitants will not be Mexican landlords, with troops of slaves, predial or otherwise.

Mr. Rusk here rose, and said that he disliked to interrupt the Senator, and therefore he had said nothing while he was describing the country between the Nueces and the Rio Grande; but he wished now to say, that, when that country comes to be known, it will be found to be as valuable

as any part of Texas. The valley of the Rio Grande is valuable from its source to its mouth. But he did not look upon *that* as indemnity; he claimed that as the *right* of Texas. So far as the Mexican population is concerned, there is a good deal of it in Texas; and it comprises many respectable persons, wealthy, intelligent, and distinguished. A good many are now moving in from New Mexico, and settling in Texas.

I take what I say from Major Gaines. But I am glad to hear that any part of New Mexico is fit for the foot of civilized man. And I am glad, moreover, that there are some persons in New Mexico who are not so blindly attached to their miserable condition as not to make an effort to come out of their country, and get into a better.

Sir, I would, if I had time, call the attention of the Senate to an instructive speech made in the other house by Mr. Smith of Connecticut. He seems to have examined all the authorities, to have conversed with all the travellers, to have corresponded with all our agents. His speech contains communications from all of them; and I commend it to every man in the United States who wishes to know what we are about to acquire by the annexation of New Mexico.

New Mexico is secluded, isolated, a place by itself, in the midst and at the foot of vast mountains, five hundred miles from the settled part of Texas, and as far from anywhere else! It does not belong anywhere! It has no *belongings* about it! At this moment it is absolutely more retired and shut out from communication with the civilized world than Hawaii or any of the other islands of the Pacific sea. In seclusion and remoteness, New Mexico may press hard on the character and condition of Typee. And its people are infinitely less elevated, in morals and condition, than the people of the Sandwich Islands. We had much better have Senators from Oahu. They are far less intelligent than the better class of our Indian neighbors. Commend me to the Cherokees, to the Choctaws; if you please, speak of the Pawnees, of the Snakes, the Flatfeet, of any thing but the *Digging* Indians, and I will be satisfied not to take the people of New Mexico. Have they any notion of our institutions, or of *any* free institutions? Have they any notion of popular government? Not the slightest! Not the slightest on earth! When the question is asked, What will be their constitution? it is farcical to talk of such people making

a constitution for themselves. They do not know the meaning of the term, they do not know its import. They know nothing at all about it; and I can tell you, Sir, that when they are made a Territory, and are to be made a State, such a constitution as the executive power of this government may think fit to send them will be sent, and will be adopted. The constitution of our *fellow-citizens* of New Mexico will be framed in the city of Washington.

Now what says in regard to all Mexico Colonel Hardin, that most lamented and distinguished officer, honorably known as a member of the other house, and who has fallen gallantly fighting in the service of his country? Here is his description:—

"The whole country is miserably watered. Large districts have no water at all. The streams are small, and at great distances apart. One day we marched on the road from Monclova to Parras thirty-five miles without water, a pretty severe day's marching for infantry.

"Grass is very scarce, and indeed there is none at all in many regions for miles square. Its place its supplied with prickly pear and thorny bushes. There is not one acre in two hundred, more probably not one in five hundred, of all the land we have seen in Mexico, which can ever be cultivated; the greater portion of it is the most desolate region I could ever have imagined. The pure granite hills of New England are a paradise to it, for they are without the thorny briers and venomous reptiles which infest the barbed barrenness of Mexico. The good land and cultivated spots in Mexico are but dots on the map. Were it not that it takes so very little to support a Mexican, and that the land which is cultivated yields its produce with little labor, it would be surprising how its sparse population is sustained. All the towns we have visited, with perhaps the exception of Parras, are depopulating, as is also the whole country.

"The people are on a par with their land. One in two hundred or five hundred is rich, and lives like a nabob; the rest are *peons*, or servants sold for debt, who work for their masters, and are as subservient as the slaves of the South, and look like Indians, and, indeed, are not more capable of self-government. One man, Jacobus Sanchez, owns three fourths of all the land our column has passed over in Mexico. We are told we have seen the best part of Northern Mexico; if so, the whole of it is not worth much.

"I came to Mexico in favor of getting or taking enough of it to pay the expenses of the war. I now doubt whether all Northern Mexico is worth the expenses of our column of three thousand men. The ex-

penses of the war must be enormous; we have paid enormous prices for every thing, much beyond the usual prices of the country."

There it is. That 's all North Mexico; and New Mexico is not the better part of it.

Sir, there is a recent traveller, not unfriendly to the United States, if we may judge from his work, for he speaks well of us everywhere; an Englishman, named Ruxton. He gives an account of the morals and the manners of the population of New Mexico. And, Mr. President and Senators, I shall take leave to introduce you to these soon to be your respected *fellow-citizens* of New Mexico:—

"It is remarkable that, although existing from the earliest times of the colonization of New Mexico, a period of two centuries, in a state of continual hostility with the numerous savage tribes of Indians who surround their territory, and in constant insecurity of life and property from their attacks, being also far removed from the enervating influences of large cities, and, in their isolated situation, entirely dependent upon their own resources, the inhabitants are totally destitute of those qualities which, for the above reasons, we might naturally have expected to distinguish them, and are as deficient in energy of character and physical courage as they are in all the moral and intellectual qualities. In their social state but one degree removed from the veriest savages, they might take a lesson even from these in morality and the conventional decencies of life. Imposing no restraint on their passions, a shameless and universal concubinage exists, and a total disregard of morality, to which it would be impossible to find a parallel in any country calling itself civilized. A want of honorable principle, and consummate duplicity and treachery, characterize all their dealings. Liars by nature, they are treacherous and faithless to their friends, cowardly and cringing to their enemies; cruel, as all cowards are, they unite savage ferocity with their want of animal courage; as an example of which, their recent massacre of Governor Bent, and other Americans, may be given, one of a hundred instances."

These, Sir, are soon to be our beloved countrymen!

Mr. President, for a good many years I have struggled in opposition to every thing which I thought tended to strengthen the arm of executive power. I think it is growing more and more formidable every day. And I think that by yielding to it in this, as in other instances, we give it a strength which it will be difficult hereafter to resist. I think that it is nothing less

than the fear of executive power which induces us to acquiesce in the acquisition of territory; fear, *fear*, and nothing else.

In the little part which I have acted in public life, it has been my purpose to maintain the people of the United States, what the Constitution designed to make them, *one people*, one in interest, one in character, and one in political feeling. If we depart from that, we break it all up. What sympathy can there be between the people of Mexico and California and the inhabitants of the Valley of the Mississippi and the Eastern States in the choice of a President? Do they know the same man? Do they concur in any general constitutional principles? Not at all.

Arbitrary governments may have territories and distant possessions, because arbitrary governments may rule them by different laws and different systems. Russia may rule in the Ukraine and the provinces of the Caucasus and Kamtschatka by different codes, ordinances, or ukases. We can do no such thing. They must be of us, *part* of us, or else strangers.

I think I see that in progress which will disfigure and deform the Constitution. While these territories remain territories, they will be a trouble and an annoyance; they will draw after them vast expenses; they will probably require as many troops as we have maintained during the last twenty years to defend them against the Indian tribes. We must maintain an army at that immense distance. When they shall become States, they will be still more likely to give us trouble.

I think I see a course adopted which is likely to turn the Constitution of the land into a deformed monster, into a curse rather than a blessing; in fact, a frame of an unequal government, not founded on popular representation, not founded on equality, but on the grossest inequality; and I think that this process will go on, or that there is *danger* that it will go on, until this Union shall fall to pieces. I resist it, to-day and always! Whoever falters or whoever flies, I continue the contest!

I know, Sir, that all the portents are discouraging. Would to God I could auspicate good influences! Would to God that those who think with me, and myself, could hope for stronger support! Would that we could stand where we desire to stand. I see the signs are sinister. But with few, or alone, my position

is fixed. If there were time, I would gladly awaken the country. I believe the country might be awakened, although it may be too late. For myself, supported or unsupported, by the blessing of God, I shall do my duty. I see well enough all the adverse indications. But I am sustained by a deep and a conscientious sense of duty; and while supported by that feeling, and while such great interests are at stake, I defy auguries, and ask no omen but my country's cause!

Exclusion of Slavery from the Territories*

In the course of the first session of the Thirtieth Congress, a bill pas the House of Representatives to organize a government for the Te tory of Oregon. This bill received several amendments on its pass through the Senate, and among them one moved by Mr. Douglass Illinois, on the 10th of August, by which the eighth section of the l of the 6th of March, 1820, for the admission of Missouri, was revi and adopted, as a part of the bill, and declared to be " in full force, a binding, for the future organization of the territories of the United Stat in the same sense and with the same understanding with which it w originally adopted."

This, with some of the other amendments of the Senate, was di greed to by the House. On the return of the bill to the Senate, a d cussion arose, and continued for several days, on the question of agr ment or disagreement with the amendments of the House to the Senat amendments.

The principal subject of this discussion was whether the Senate wo recede from the above-mentioned amendment moved by Mr. Dougla which was finally decided in the affirmative. In these discussions considerable portion of which was of a conversational character, M Webster took a leading part ; but of most of what was said by him, by other Senators, no report has been preserved. The session of t Senate at which the last and most animated discussion of this subj took place, nominally on Saturday of the 12th of August, was prolong till ten o'clock, A. M., of Sunday, the 13th. In the course of the deb on this day Mr. Webster spoke as follows.

I AM very little inclined to prolong this debate, and I hop am utterly disinclined to bring into it any new warmth or

* Remarks made in the Senate of the United States, on the 12th of Aug 1848.

citement. I wish to say a few words, however, first, upon the question as it is presented to us, as a parliamentary question; and secondly, upon the general political questions involved in the debate.

As a question of parliamentary proceeding, I understand the case to be this. The House of Representatives sent us a bill for the establishment of a territorial government in Oregon; and no motion has been made in the Senate to strike out any part of that bill. The bill purporting to respect Oregon, simply and alone, has not been the subject of any objection in this branch of the legislature. The Senate has proposed no important amendment to this bill, affecting Oregon itself; and the honorable member from Missouri* was right, entirely right, when he said that the amendment now under consideration had no relation to Oregon. That is perfectly true; and therefore the amendment which the Senate has adopted, and the House has disagreed to, has no connection with the immediate subject before it. The truth is, that it is an amendment by which the Senate wishes to have now a public, legal declaration, not respecting Oregon, but respecting the newly acquired territories of California and New Mexico. It wishes now to make a line of slavery, which shall include those new territories. The amendment says that the line of the "Missouri Compromise" shall be the line to the Pacific, and then goes on to say, in the language of the bill as it now stands, that the Ordinance of 1787 shall be applicable to Oregon; and therefore I say that the amendment proposed is foreign to the immediate object of the bill. It does nothing to modify, restrain, or affect, in any way, the government which we propose to establish over Oregon, or the condition or character of that government, or of the people under it. In a parliamentary view, this is the state of the case.

Now, Sir, this amendment has been attached to this bill by a strong majority of the Senate. That majority had the right, as it had the power, to pass it. The House disagreed to that amendment. If the majority of the Senate, who attached it to the bill, are of opinion that a conference with the House will lead to some adjustment of the question, by which this amendment, or something equivalent to it, may be adopted by the

* Mr. Benton.

House, it is very proper for them to urge a conference. It is very fair, quite parliamentary, and there is not a word to be said against it. But my position is that of one who voted against the amendment, who thinks that it ought not to be attached to this bill; and therefore I naturally vote for the motion to get rid of it, that is, "to recede."

So much for the parliamentary question. Now there are two or three political questions arising in this case, which I wish to state dispassionately; not to argue, but to state. The honorable member from Georgia,* for whom I have great respect, and with whom it is my delight to cultivate personal friendship, has stated, with great propriety, the importance of this question. He has said, that it is a question interesting to the South and to the North, and one which may very well also attract the attention of mankind. He has not stated any part of this too strongly. It is such a question. Without doubt, it is a question which may well attract the attention of mankind. On the subjects involved in this debate, the whole world is not now asleep. It is wide awake; and I agree with the honorable member, that, if what is now proposed to be done by us who resist this amendment is, as he supposes, unjust and injurious to any portion of this community, or against its constitutional rights, that injustice should be presented to the civilized world, and we, who concur in the proceeding, ought to submit ourselves to its rebuke. I am glad that the honorable gentleman proposes to refer this question to the great tribunal of Modern Civilization, as well as the great tribunal of the American People. It is proper. It is a question of magnitude enough, of interest enough, to all the civilized nations of the earth, to call from those who support the one side or the other a statement of the grounds upon which they act.

Now I propose to state as briefly as I can the grounds upon which I proceed, historical and constitutional; and will endeavor to use as few words as possible, so that I may relieve the Senate from hearing me at the earliest possible moment. In the first place, to view the matter historically. This Constitution, founded in 1787, and the government under it, organized in 1789, do recognize the existence of slavery in certain States, then belonging to the Union; and a particular description of slavery.

* Mr. Berrien.

I hope that what I am about to say may be received without any supposition that I intend the slightest disrespect. But this particular description of slavery does not, I believe, now exist in Europe, nor in any other civilized portion of the habitable globe. It is not a predial slavery. It is not analogous to the case of the *predial* slaves, or slaves *glebæ adscripti* of Russia, or Hungary, or other states. It is a peculiar system of personal slavery, by which the person who is called a slave is transferable as a chattel, from hand to hand. I speak of this as a fact; and that is the fact. And I will say further, perhaps other gentlemen may remember the instances, that although slavery, as a system of servitude attached to the earth, exists in various countries of Europe, I am not at the present moment aware of any place on the globe in which this property of man in a human being as a slave, transferable as a chattel, exists, except America. Now, that it existed, in the form in which it still exists, in certain States, at the formation of this Constitution, and that the framers of that instrument, and those who adopted it, agreed that, as far as it existed, it should not be disturbed or interfered with by the new general government, there is no doubt.

The Constitution of the United States recognizes it as an existing fact, an existing relation between the inhabitants of the Southern States. I do not call it an "institution," because that term is not applicable to it; for that seems to imply a voluntary establishment. When I first came here, it was a matter of frequent reproach to England, the mother country, that slavery had been entailed upon the colonies by her, against their consent, and that which is now considered a cherished "institution" was then regarded as, I will not say an *evil*, but an entailment on the Colonies by the policy of the mother country against their wishes. At any rate, it stands upon the Constitution. The Constitution was adopted in 1788, and went into operation in 1789. When it was adopted, the state of the country was this: slavery existed in the Southern States; there was a very large extent of unoccupied territory, the whole Northwestern Territory, which, it was understood, was destined to be formed into States; and it was then determined that no slavery should exist in this territory. I gather now, as a matter of inference from the history of the time and the history of the debates, that the prevailing motives with the North for agreeing to this recognition

of the existence of slavery in the Southern States, and giving a representation to those States founded in part upon their slaves, rested on the supposition that no acquisition of territory would be made to form new States on the southern frontier of this country, either by cession or conquest. No one looked to any acquisition of new territory on the southern or southwestern frontier. The exclusion of slavery from the Northwestern Territory and the prospective abolition of the foreign slave trade were generally, the former unanimously, agreed to; and on the basis of these considerations, the South insisted that where slavery existed it should not be interfered with, and that it should have a certain ratio of representation in Congress. And now, Sir, I am one, who, believing such to be the understanding on which the Constitution was framed, mean to abide by it.

There is another principle, equally clear, by which I mean to abide; and that is, that in the Convention, and in the first Congress, when appealed to on the subject by petitions, and all along in the history of this government, it was and has been a conceded point, that slavery in the States in which it exists is a matter of State regulation exclusively, and that Congress has not the least power over it, or right to interfere with it. Therefore I say, that all agitations and attempts to disturb the relations between master and slave, by persons not living in the slave States, are unconstitutional in their spirit, and are, in my opinion, productive of nothing but evil and mischief. I countenance none of them. The manner in which the governments of those States where slavery exists are to regulate it, is for their own consideration, under their responsibility to their constituents, to the general laws of propriety, humanity, and justice, and to God. Associations formed elsewhere, springing from a feeling of humanity, or any other cause, have nothing whatever to do with it, nor right to interfere with it. They have never received any encouragement from me, and they never will. In my opinion, they have done nothing but delay and defeat their own professed objects.

I have now stated, as I understand it, the condition of things upon the adoption of the Constitution of the United States. What has happened since? Sir, it has happened that, above and beyond all contemplation or expectation of the original framers of the Constitution, or the people who adopted it, for-

eign territory has been acquired by cession, first from France, and then from Spain, on our southern frontier. And what has been the result? Five slave-holding States have been created and added to the Union, bringing ten Senators into this body, (I include Texas, which I consider in the light of a foreign acquisition also,) and up to this hour in which I address you, not one free State has been admitted to the Union from all this acquired territory!

Mr. Berrien (in his seat). Yes, Iowa.

Iowa is not yet in the Union. Her Senators are not here. When she comes in, there will be one to five, one free State to five slave States, formed out of new territories. Now, it seems strange to me that there should be any complaint of injustice exercised by the North toward the South. Northern votes have been necessary, they have been ready, and they have been given, to aid in the admission of these five new slave-holding States. These are facts; and as the gentleman from Georgia has very properly put it as a case in which we are to present ourselves before the world for its judgment, let us now see how we stand. I do not represent the North. I state my own case; and I present the matter in that light in which I am willing, as an individual member of Congress, to be judged by civilized humanity. I say, then, that, according to true history, the slave-holding interest in this country has not been a disfavored interest; it has not been disfavored by the North. The North has concurred to bring in these five slave-holding States out of newly acquired territory, which acquisitions were not at all in the contemplation of the Convention which formed the Constitution, or of the people when they agreed that there should be a representation of three fifths of the slaves in the then existing States.

Mr. President, what is the result of this? We stand here now, at least I do, for one, to say, that, considering there have been already five new slave-holding States formed out of newly acquired territory, and only one non-slaveholding State, at most, I do not feel that I am called on to go further; I do not feel the obligation to yield more. But our friends of the South say, You deprive us of all our rights. We have fought for this territory, and you deny us participation in it. Let us consider this question as it really is; and since the honorable gentleman

from Georgia proposes to leave the case to the enlightened and impartial judgment of mankind, and as I agree with him that it is a case proper to be considered by the enlightened part of mankind, let us see how the matter in truth stands. Gentlemen who advocate the case which my honorable friend from Georgia, with so much ability, sustains, declare that we invade their rights, that we deprive them of a participation in the enjoyment of territories acquired by the common services and common exertions of all. Is this true? How deprive? Of what do we deprive them? Why, they say that we deprive them of the privilege of carrying their slaves, as slaves, into the new territories. Well, Sir, what is the amount of that? They say that in this way we deprive them of the opportunity of going into this acquired territory with their property. Their "property"? What do they mean by "property"? We certainly do not deprive them of the privilege of going into these newly acquired territories with all that, in the general estimate of human society, in the general, and common, and universal understanding of mankind, is esteemed property. Not at all. The truth is just this. They have, in their own States, peculiar laws, which create property in persons. They have a system of local legislation on which slavery rests; while every body agrees that it is against natural law, or at least against the common understanding which prevails among men as to what is natural law.

I am not going into metaphysics, for therein I should encounter the honorable member from South Carolina,* and we should find "no end, in wandering mazes lost," until after the time for the adjournment of Congress. The Southern States have peculiar laws, and by those laws there is property in slaves. This is purely local. The real meaning, then, of Southern gentlemen, in making this complaint, is, that they cannot go into the territories of the United States carrying with them their own peculiar local law, a law which creates property in persons. This, according to their own statement, is all the ground of complaint they have. Now here, I think, gentlemen are unjust towards us. How unjust they are, others will judge; generations that will come after us will judge. It will not be contended that this sort of

* Mr. Calhoun.

personal slavery exists by general law. It exists only by local law. I do not mean to deny the validity of that local law where it is established; but I say it is, after all, local law. It is nothing more. And wherever that local law does not extend, property in persons does not exist. Well, Sir, what is now the demand on the part of our Southern friends? They say, "We will carry our local laws with us wherever we go. We insist that Congress does us injustice unless it establishes in the territory in which we wish to go our own local law." This demand I for one resist, and shall resist. It goes upon the idea that there is an inequality, unless persons under this local law, and holding property by authority of that law, can go into new territory and there establish that local law, to the exclusion of the general law. Mr. President, it was a maxim of the civil law, that, between slavery and freedom, freedom should always be presumed, and slavery must always be proved. If any question arose as to the *status* of an individual in Rome, he was presumed to be free until he was proved to be a slave, because slavery is an exception to the general rule. Such, I suppose, is the general law of mankind. An individual is to be presumed to be free, until a law can be produced which creates ownership in his person. I do not dispute the force and validity of the local law, as I have already said; but I say, it is a matter to be proved; and therefore, if individuals go into any part of the earth, it is to be proved that they are not freemen, or else the presumption is that they are.

Now our friends seem to think that an inequality arises from restraining them from going into the territories, unless there be a law provided which shall protect their ownership in persons. The assertion is, that we create an inequality. Is there nothing to be said on the other side in relation to inequality? Sir, from the date of this Constitution, and in the counsels that formed and established this Constitution, and I suppose in all men's judgment since, it is received as a settled truth, that slave labor and free labor do not exist well together. I have before me a declaration of Mr. Mason, in the Convention that formed the Constitution, to that effect. Mr. Mason, as is well known, was a distinguished member from Virginia. He says that the objection to slave labor is, that it puts free white labor in disrepute; that it causes labor to be regarded as

derogatory to the character of the free white man, and that the free white man despises to work, to use his expression, where slaves are employed. This is a matter of great interest to the free States, if it be true, as to a great extent it certainly is, that wherever slave labor prevails free white labor is excluded or discouraged. I agree that slave labor does not necessarily exclude free labor totally. There is free white labor in Virginia, Tennessee, and other States, where most of the labor is done by slaves. But it necessarily loses something of its respectability, by the side of, and when associated with, slave labor. Wherever labor is mainly performed by slaves, it is regarded as degrading to freemen. The freemen of the North, therefore, have a deep interest in keeping labor free, exclusively free, in the new territories.

But, Sir, let us look further into this alleged inequality. There is no pretence that Southern people may not go into territory which shall be subject to the Ordinance of 1787. The only restraint is, that they shall not carry slaves thither, and continue that relation. They say this shuts them altogether out. Why, Sir, there can be nothing more inaccurate in point of fact than this statement. I understand that one half the people who settled Illinois are people, or descendants of people, who came from the Southern States. And I suppose that one third of the people of Ohio are those, or descendants of those, who emigrated from the South; and I venture to say, that, in respect to those two States, they are at this day settled by people of Southern origin in as great a proportion as they are by people of Northern origin, according to the general numbers and proportion of people, South and North. There are as many people from the South, in proportion to the whole people of the South, in those States, as there are from the North, in proportion to the whole people of the North. There is, then, no exclusion of Southern people; there is only the exclusion of a peculiar local law. Neither in principle nor in fact is there any inequality.

The question now is, whether it is not competent to Congress, in the exercise of a fair and just discretion, considering that there have been five slave-holding States added to this Union out of foreign acquisitions, and as yet only one free State, to prevent their further increase. That is the question. I see

no injustice in it. As to the power of Congress, I have nothing to add to what I said the other day. . Congress has full power over the subject. It may establish any such government, and any such laws, in the territories, as in its discretion it may see fit. It is subject, of course, to the rules of justice and propriety; but it is under no constitutional restraints.

I have said that I shall consent to no extension of the area of slavery upon this continent, nor to any increase of slave representation in the other house of Congress. I have now stated my reasons for my conduct and my vote. We of the North have already gone, in this respect, far beyond all that any Southern man could have expected, or did expect, at the time of the adoption of the Constitution. I repeat the statement of the fact of the creation of five new slave-holding States out of newly acquired territory. We have done that which, if those who framed the Constitution had foreseen, they never would have agreed to slave representation. We have yielded thus far; and we have now in the House of Representatives twenty persons voting upon this very question, and upon all other questions, who are there only in virtue of the representation of slaves.

Let me conclude, therefore, by remarking, that, while I am willing to present this as showing my own judgment and position, in regard to this case, and I beg it to be understood that I am speaking for no other than myself, and while I am willing to offer it to the whole world as my own justification, I rest on these propositions: First, That when this Constitution was adopted, nobody looked for any new acquisition of territory to be formed into slave-holding States. Secondly, That the principles of the Constitution prohibited, and were intended to prohibit, and should be construed to prohibit, all interference of the general government with slavery as it existed and as it still exists in the States. And then, looking to the operation of these new acquisitions, which have in this great degree had the effect of strengthening that interest in the South by the addition of these five States, I feel that there is nothing unjust, nothing of which any honest man can complain, if he is intelligent, and I feel that there is nothing with which the civilized world, if they take notice of so humble a person as myself, will reproach me,

when I say, as I said the other day, that I have made up my mind, for one, that under no circumstances will I consent to the further extension of the area of slavery in the United States, or to the further increase of slave representation in the House of Representatives.

The Panama Railroad*

I SHOULD regret, Sir, that a measure which I regard as exceedingly important should be disposed of by indefinite postponement. I had hoped that the measure might be allowed to proceed until its details were arranged so that they might be satisfactory to the Senate, and I rise merely to express my opinion in favor of the measure, generally, concurring in it especially for the reasons assigned by the honorable Senator from Missouri.† I think the circumstances of the country call for the adoption of this particular measure. I do not mean to say, Sir, that there may not be several modes of establishing a communication with the Pacific coast that are equally desirable. I am willing to say, on the other hand, that I have regarded the subject of a communication from the Atlantic to the Pacific, by way of Tehuantepec, as preferable, on account of its being nearer to our ports on the Gulf; and I will add, that, if the proposition for a railroad were now before us, connecting the two oceans by that route, and the project had advanced so far that we could pronounce it to be practicable, I should give it my most hearty support. I do not think the view which has been adopted by the Senator from Connecticut ‡ is entirely correct, that the present exigency for a channel of communication will be a very short one. I do not apprehend that there will cease to be an occasion for a great deal of intercourse between the Atlantic and Pacific, and between our own territories on

* Remarks in the Senate, on the 31st of January, 1849, on the Motion submitted by Mr. Allen, of Ohio, to postpone indefinitely the Bill making an appropriation for the transportation of the United States Mails by Railroad across the Isthmus of Panama.

† Mr. Benton. ‡ Mr. Niles.

either side of the continent. I think the progress of thin onward; and, let the speculations and operations in the mines go forward more or less rapidly, I think an interc is now to be opened for general purposes of trade and merce between the Atlantic and Pacific.

I have not devoted my attention to the particular provis or details of this measure. I am not in possession of such mates as enable me to say whether the limitations so calle the bill now on your table, or the limitation which will be ir same bill if the motion of the Senator from Connecticut pre is the best. The bill proposes to authorize the Secretary o Navy to contract for the transportation of goods and merc dise, munitions of war, and troops, across the isthmus, an pay for this transportation an annual sum. The bill limits sum at two hundred and fifty thousand dollars. The Sen from Connecticut moves to substitute one hundred and thousand. Without more information than I have upon point, I cannot say which would be the proper sum. I un stand that the parties who have undertaken the constructio the road estimate its cost at four or five millions of dollars; they have founded their opinion upon the cost commonly att ing the construction of roads in the United States, economic conducted, making, of course, proper allowance for the nece rily augmented expense of a work to be done so far from resources which are to supply the means. It is known, too, that a very great reduction for wear and tear is made from receipts of all railroads, so that the general estimates of inc by reference to any ordinary rule of computation, not allov for the wear of the road, would be very inadequate to repre the actual state of things that will arise when this road has completed.

Now, it is evident, Sir, that this proposed road will sho the distance between the ports of the United States on the lantic and the ports of the United States on the Pacific. a nearer route probably by not less than ten thousand m certainly not less than nine thousand. It will shorten the c munication in point of time more than one half, and what shortens the time diminishes the cost. If troops are to be veyed, they are under pay while at sea; if munitions of or merchandise are to be transported, they ought to reach

destination within as short a time as possible; and in every point of view in which we can make an estimate of this matter, we must all, I think, see that a great, a very great, I am not prepared to say how great a saving, will inure to the United States by adopting the shorter route.

I will state, Sir, that, with respect to other modes of conveyance, I have no doubt that we shall ere long have them across the continent from our own frontier territory on one side to that on the other. I entertain as little doubt that there will be a communication established over the other route through Tehuantepec. I entertain no doubt at all about this; but I do think that there is an exigency, a present want of conveyance, and that this is the readiest, and the only ready, mode of obtaining it. I think there is a prospect, if this project be favored by the government of the United States, from the known enterprise of the respectable gentlemen who have undertaken it, that it will be as sure to be accomplished as any work can possibly be. My honorable friend from Ohio* says that it will be time enough to make this contract when the work is done. In ordinary cases this would be very true; but it must be remembered that this is a very great work, requiring an expenditure of four or five millions of dollars, and it is but reasonable that those who embark their fortunes in it should have some assurance that they will receive the patronage of the government.

Now, in respect to the amount of money to be paid, no man knows less what would be the proper sum to be paid than I do. If it be the pleasure of the Senate and the other branch of Congress, that matter may be left more in the discretion and within the control of Congress hereafter. I do not look upon this as a matter by which a speculation is to be made, on the part of the contractors, out of the treasury of the United States.

Upon the whole, I think the work ought to be commenced as early as practicable, and that it ought to be speedily completed, for the reasons stated by the Senator from Missouri. This plan appears practicable; I think the object is attainable, and I think it is attainable at a reasonable expense, and therefore I am decidedly in favor of the amendment. At the same time, I shall concur in any amendment or alteration, either with the view of re-

* Mr. Allen.

ducing the expense, or limiting still further the Navy Department with respect to the extent to which it will pledge the credit of the United States. I think, as I said before, that the circumstances of the country call for the road, and there is nothing in these circumstances that is likely to make it so short-lived or temporary as some Senators seem to imagine; that there is no probability that this work will not be necessary for a number of years. And I repeat again, if there were a proposition now before us for the other route, and if that proposition were in as advanced a state as this, and if we were to have but one, I would give the preference to the route by Tehuantepec; but I still think that, as this work is practicable, and as a channel of communication is necessary for us, we ought not to hesitate to adopt the one proposed, in order that we may avail ourselves of the advantages which it will furnish, until we shall be able to construct a road through our own territory.

On the 6th of February, the same subject being under debate, Mr. Webster spoke as follows: —

Mr. President, in my opinion, unless this bill shall pass, we shall find ourselves a year hence in exactly the same condition with regard to communication with the western shore of this continent that we now are. And whether we should adopt this bill or not depends upon the general view which we entertain of the necessity, or high utility and expediency, of proceeding as soon as may be to open a communication across the continent somewhere between the Atlantic and the Pacific Oceans. I have no idea, that, without the assistance in advance, so far as any thing is pledged in advance by this bill, this communication will ever be made. I am sure it will not. It requires a very great sum of money. It requires heavy capital, and much credit to raise it. It has to be expended a good way from home, under agencies, some of them sent from this country; some of them found, as well as they may be found, there.

Now let us look at the general aspect of the case, and see whether it be necessary or expedient on the part of the government to encourage and set forward the making of this communication; and then, in the next place, whether the terms proposed in the memorial upon which this bill is founded, or in the amendment proposed, are reasonable.

The basis of the whole, Sir, is our treaty with New Granada, which was ratified by this body, and proclaimed in June, 1848. Looking to the security of a mode of communication across the continent at this isthmus, this government took great pains to obtain the right from the government of New Granada, and by the treaty it is stipulated that whatsoever communication should be made across the isthmus should be open to the government of the United States and citizens of the United States upon as good terms as to the citizens of New Granada itself. This government, looking upon this stipulation as a benefit obtained, a boon conceded by the government of New Granada, as an equivalent for this consideration, entered, on its part, into an engagement to protect, and guaranty, and defend the neutrality of this whole isthmus. This will be seen by reference to the thirty-fifth article of the treaty, which will be found in the volume of the laws of the last session. It is there very distinctly stated. There is no question about it. We are under treaty obligations to maintain the neutrality of this isthmus, and the authority of the government of New Granada over it.

Now, it so happens, that some time before, two or three years previous, the government of New Granada had made a grant to certain citizens of France and England, enabling them to make this railroad and hold an exclusive property in it. One of the terms and conditions of that grant was, that something should be done, or a certain deposit should be made, within a certain period. I believe six hundred thousand francs, or some such large sum, was to be deposited within a certain period. Progress was not made by that company in getting ready the deposit in money, but the charter of the French company had not quite run out when this government ratified the treaty with New Granada. It expired soon afterwards, however, so that no embarrassment arose from that circumstance. The charter reverted to the government of New Granada, because the French company had not made good their deposit. Under these circumstances, Sir, a new contract was entered into by the persons whose names are attached to this memorial. They are not assignees of any French company, as the Senator from Kentucky* suggested, but stand in the place of original gran-

* Mr. Underwood.

tees from the government of New Grenada, and by the terms contained in the grant they have now the privilege of making this railroad across the isthmus, having eight years to do it in.

The honorable Senator from Kentucky thinks that it would have been better if the government of the United States had appeared earlier, and taken upon itself to make this railroad, according to our old-fashioned way of internal improvements. Well, suppose that were so, how does it bear upon the question now before us? We have not the grant. We cannot obtain the grant. It is in the hands of others, and, in my opinion, much better for our purpose than in the possession of the government. At any rate, the only question now before us is the propriety or the expediency, or the impropriety or the inexpediency, of helping forward the making of this road under the grant, the purport of which is exhibited in the memorial now before us. That is the whole question. It was put upon that ground by the honorable Senator from Missouri,* and the only practical question is, Is it worth our while, at this expense and for this purpose, to encourage the making of this road?

Now, Sir, there are two considerations which present themselves. One of them is properly stated in the bill itself. One inducement to government is to provide for the transportation of its own troops, munitions of war, naval stores, and the mails. But it is obvious at once that that is not the only object. Does the government look to nothing but the transportation of its own materials, mails, and troops? Does it not look, as in other extensive undertakings, to a general public accommodation, an accommodation of the people, and convenience to the commerce of the country, not likely to be obtained without this aid? That larger and more general consideration, that consideration of benefit to the trade and commerce of the country, is certainly, if not the greatest, equally great, in my judgment, with any that results from the mere saving of expense in the transportation of troops, munitions of war, and the mails. Well, then, if we have guarantied the neutrality of the isthmus; if we maintain a communication by steamships from the Atlantic ports to this end of the road, at a great expense; if we maintain a communication in like manner from the ports of the Pacific to the

* Mr. Benton.

other end of the road at Panama, at a great expense; the question is one of practical good sense and expediency, whether we shall connect these two lines of water communication by land communication, and whether the terms of the contract now before us are reasonable.

Certainly, it must strike every body, it seems to me, that it is desirable that there should be this passage across the isthmus, since we have expended so much money to get to the isthmus, both on the one side and on the other.

Well, then, what are the terms of the contract? Are they reasonable or unreasonable? I do not intend to say more in this respect than to present to the Senate some few general estimates and statements, which every man's experience will enable him to judge of, and in regard to the correctness of which there can, I think, be very little doubt. The estimated cost of the road, according to Colonel Abert, is five millions of dollars, or thereabouts; that is to say, Colonel Abert begins by stating the average cost of railroads in the New England States at forty-nine or fifty thousand dollars per mile. He allows fifty per cent. additional cost for the nature of the country, the distance of the place, and other causes naturally augmenting the cost of constructing the road. Taking the distance to be fifty-two miles, the result is a cost for one track of $3,815,000; another track is half a million more; so that, together, they make $4,315,000. Well, then, it is certainly a very low estimate to suppose that the difference between that sum and five millions may be necessary for breakwaters, piers, and improvements in harbors, to render both sides accessible and safe. Then, again, there is the expense for warehouses, a very important item, to be included within this residuum. Taking, then, the aggregate to be not less than five millions of dollars, the question is, whether it is not reasonable to expect this government to contribute such a sum as the proposed substitute contemplates towards the opening of this communication between the two oceans.

Now, Sir, I do not see, I confess, any foundation for such supposed large profits as the honorable member from Kentucky thinks likely to accrue. Here are certain rates of passage and certain rates of freight fixed in this bill. The rates of passage are eight dollars per man or passenger for the first five years,

afterwards a low rate is stipulated. Now, upon any estimate we may make from these rates, what will be the amount of income from passengers a year? As far as we can now judge, how many people per day would be likely to travel over this road? Why, I can well imagine that, at some seasons of the year, there would be a great many passengers; but I suppose that at other seasons, although it would be necessary for the company to keep up the same equipment, and to incur the same expense, there would be very few passengers.

But does any one suppose that, for the next ten years, it will not be a high estimate to calculate that a hundred passengers a day will pass over the road? That would be to suppose that vessels would arrive there with a hundred passengers a day. I have no idea that that number would be conveyed. And as to goods or freights, the Senator from Kentucky supposes that the amount to be conveyed will be about ten thousand tons a year. But suppose the passengers to be a hundred a day, there is eight hundred dollars. Suppose the goods will amount to one hundred tons a day (three times as much in a year as the Senator estimates), that makes another eight hundred dollars, and in the aggregate sixteen hundred dollars a day. Then, if you allow three hundred working days for the year, the amount of the gross receipts will be four hundred and eighty thousand dollars. Well, if this were all clear income, it would be very well; but it will be subject to a very great reduction for the expenses of keeping the road in operation, as in the case of all other railroads. Colonel Abert's estimates make the expenses and repairs equal to one half of the gross receipts; consequently, equal to two hundred and forty thousand dollars a year. The whole amount of clear receipts, then, two hundred and forty thousand dollars, will be less than five per cent. on the capital to be invested.

To take another view of it. Suppose that seventy-five persons a day and seventy-five tons of goods, which is quite as much, perhaps, as may be expected, pass over the road; upon a like estimate, allowing three hundred working days to the year, the result will be an income amounting to a little over three per cent. on the capital. Of course, if you suppose that the passengers will not exceed fifty, it reduces the sum still more, and renders the dividend on the capital not quite two and a half per

cent. We cannot, judging from experience, expect that the cost of the road per mile will be less than the sum named. We have built roads over the United States, North and South, at various degrees of cost. The Harlem Railroad, I believe, cost four millions of dollars, being fifty thousand dollars a mile for eighty miles. The Hudson River Railroad, it is said, has cost about fifty thousand dollars a mile.

And now, when we look at the income of this proposed road, we are to take with us one very important consideration. Here is one terminus of the road on the Atlantic, the other on the Pacific; the distance between the two extremities is fifty-two miles, and there is no intermediate trade or traffic. I do not know any road in the country that could sustain itself without some intermediate traffic. It is generally supposed that no railroad in New England could now be sustained upon the through travel alone. It is stated on good authority, that on the road from Worcester to Albany, for the years 1841, 1842, and 1843, the receipts from way-passengers, for one of those years, were greater than the entire receipts from *through*-passengers for the whole three years. And it is those receipts from way-passengers, this intermediate travel and traffic, which enable the road to maintain itself and make a dividend. Now, no one supposes that, for a great length of time, there can be any thing like any way-travel upon this road. There is no town of any importance at the ends, and no adjacent inhabitants. Those who disembark at one extremity of the road will pass over it, and embark at the other extremity of it, and this is all the travel the road will obtain. This is a very important consideration attached to all railroads and canals everywhere. It is a remark that is true of the Erie Canal, in its early history, that the receipts for the business between Albany and Buffalo both ways, for three years, amounted only to two and a half per cent. of the entire receipts for tolls. There is no dispute about this, and the enlarged receipts of the canal have been created, in a great degree, by the growth of the country, and the extension of traffic along the line. The traffic on the Panama route is yet to be created. It is to be produced by the growth and extension of commerce on the coast, and between the Atlantic and Pacific Oceans. Its business is to become profitable, if ever, by the course of trade taking that direction in consequence of the creation of the railroad itself.

Now, Sir, I agree entirely with what has been suggested, that many of these expectations in regard to changing the course of trade, by the establishment of this road, will not be realized. I agree entirely, that for the present there will be much less use for the road than many men of ardent imaginations suppose. I know it is the opinion of gentlemen engaged in the whale-fishery, that their cargoes will not bear the expense of transshipment, and that it will be found cheaper for them to follow the old track around the Cape. Not only is this so, but while they are at sea they are always looking out for the object of their voyage. I remember to have perused, some years ago, an extract from the journal of Commodore Biddle. He was returning from a cruise in the Pacific, and, after having got within the Gulf-stream, he met a "whaler" from Nantucket, outward bound, on a three years' voyage. The man at the masthead of the whaler hailed the Commodore to know *if he had seen any fish.* From the time of their leaving port until they return to it, they keep constantly looking out for their prey; and I am told that this is especially the case on the coast of Brazil, where they meet with the species of the whale called the black whale, and after turning the Cape they look out for sperm whales. So that, besides the expense of transshipment, there is the other consideration, that during all the while they are at sea they are continually in pursuit of the object of their enterprise.

We may reasonably conclude, then, that this railroad will not be used for the transit of the cargoes of whale ships. Experienced merchants do not credit the suggestion that the China trade will ever use the projected railroad. So that, on the whole, it is by no means clear that it is prudent to undertake the making of this road, as a mere speculation. But is there not a higher object, in which the interest of this country is deeply concerned, for which the work should be undertaken and completed? Senators may answer this question on general grounds. For my own part, I have no hesitation, from the consideration of what has already been done, and what may be done. I think it a great object to connect the two oceans, and I myself think the price to be paid is little enough. I think it is by no means too high, and my fears are whether, after all, they will be able to make the road without still further encouragement. Considering, however, the character of the

petitioners, we have reason to believe that, with the assurance that this sum will be paid, they may be able to obtain so much more credit and so much greater facility in conducting their operations, that they will be able to complete the work.

There is one other thing to be remembered, that this will be the only way of crossing the isthmus for many years to come. Public attention has been very strongly drawn to this subject. We have now extensive territories on the other side of the continent, and although we do not know whether the immediate object of those who invest their capital in the undertaking will be attained, although we do not know whether they will, for ten years to come, be remunerated for their outlay, still the advantage to the public which must accrue from the direction given to the business of the country which must necessarily be carried through that channel, will be of so decided a character that it ought to be undertaken. Whether the hopes and expectations of those who visit the gold region shall or shall not be realized, the commerce of the country will, nevertheless, be benefited, by having a ready communication between the Atlantic and Pacific coast. I believe, therefore, that the public generally are decidedly in favor of some immediate measure, to be begun *now*, to open a communication which shall so much shorten the distance between the United States on this side of the mountains and the territory of the United States on the other side. It is in this point of view that I think this is precisely the measure that is called for by the judgment of the whole country, and the only practicable measure that has been suggested; and it is for these reasons that I sustain it.

The Constitution and the Union*

On the 25th of January, 1850, Mr. Clay submitted a series of resolutions to the Senate, on the subject of slavery, in connection with the various questions which had arisen in consequence of the acquisition of Mexican territory. These resolutions furnished the occasion of a protracted debate. On Wednesday, the 6th of March, Mr. Walker of Wisconsin engaged in the discussion, but owing to the length of time taken up by repeated interruptions, he was unable to finish his argument. In the mean time it had been generally understood that Mr. Webster would, at an early day, take an opportunity of addressing the Senate on the present aspect of the slavery question, on the dangers to the Union of the existing agitation, and on the terms of honorable adjustment. In the expectation of hearing a speech from him on these all-important topics, an immense audience assembled in the Senate-chamber at an early hour of Thursday, the 7th of March. The floor, the galleries, and the antechambers of the Senate were crowded, and it was with difficulty that the members themselves were able to force their way to their seats.

At twelve o'clock the special order of the day was announced, and the Vice-President stated that Mr. Walker of Wisconsin was entitled to the floor. That gentleman, however, rose and said, —

"Mr. President, this vast audience has not come together to hear me, and there is but one man, in my opinion, who can assemble such an audience. They expect to hear him, and I feel it to be my duty, therefore, as it is my pleasure, to give the floor to the Senator from Massachusetts. I understand it is immaterial to him upon which of these questions he speaks, and therefore I will not move to postpone the special order."

Mr. Webster then rose, and, after making his acknowledgments to the

* A Speech delivered in the Senate of the United States, on the 7th of March, 1850.

Senators from Wisconsin (Mr. Walker) and New York (Mr. Seward) for their courtesy in yielding the floor to him, delivered the following speech, which, in consideration of its character and of the manner in which it was received throughout the country, has been entitled a speech for "the Constitution and the Union." In the pamphlet edition it was dedicated in the following terms to the people of Massachusetts:—

WITH THE HIGHEST RESPECT,

AND THE DEEPEST SENSE OF OBLIGATION

I DEDICATE THIS SPEECH

TO THE

PEOPLE OF MASSACHUSETTS.

"His ego gratiora dictu alia esse scio; sed me VERA PRO GRATIS loqui, nisi meum ingenium non moneret, necessitas cogit. Vellem, equidem, vobis placere; sed multo malo vos salvos esse, qualicunque erga me animo futuri estis."

DANIEL WEBSTER.

Mr. President, — I wish to speak to-day, not as a Massachusetts man, nor as a Northern man, but as an American, and a member of the Senate of the United States. It is fortunate that there is a Senate of the United States; a body not yet moved from its propriety, not lost to a just sense of its own dignity and its own high responsibilities, and a body to which the country looks, with confidence, for wise, moderate, patriotic, and healing counsels. It is not to be denied that we live in the midst of strong agitations, and are surrounded by very considerable dangers to our institutions and government. The imprisoned winds are let loose. The East, the North, and the stormy South combine to throw the whole sea into commotion, to toss its billows to the skies, and disclose its profoundest depths. I do not affect to regard myself, Mr. President, as holding, or as fit to hold, the helm in this combat with the political elements; but I have a duty to perform, and I mean to perform it with fidelity, not without a sense of existing dangers, but not without hope. I have a part to act, not for my own security or safety, for I am looking out for no fragment upon which to float away from the wreck, if wreck there must be, but for the good of the whole, and the preservation of all; and there is that

which will keep me to my duty during this struggle, whether the sun and the stars shall appear, or shall not appear for many days. I speak to-day for the preservation of the Union. "Hear me for my cause." I speak to-day, out of a solicitous and anxious heart, for the restoration to the country of that quiet and that harmony which make the blessings of this Union so rich, and so dear to us all. These are the topics that I propose to myself to discuss; these are the motives, and the sole motives, that influence me in the wish to communicate my opinions to the Senate and the country; and if I can do any thing, however little, for the promotion of these ends, I shall have accomplished all that I expect.

Mr. President, it may not be amiss to recur very briefly to the events which, equally sudden and extraordinary, have brought the country into its present political condition. In May, 1846, the United States declared war against Mexico. Our armies, then on the frontiers, entered the provinces of that republic, met and defeated all her troops, penetrated her mountain passes, and occupied her capital. The marine force of the United States took possession of her forts and her towns, on the Atlantic and on the Pacific. In less than two years a treaty was negotiated, by which Mexico ceded to the United States a vast territory, extending seven or eight hundred miles along the shores of the Pacific, and reaching back over the mountains, and across the desert, until it joins the frontier of the State of Texas. It so happened, in the distracted and feeble condition of the Mexican government, that, before the declaration of war by the United States against Mexico had become known in California, the people of California, under the lead of American officers, overthrew the existing Mexican provincial government, and raised an independent flag. When the news arrived at San Francisco that war had been declared by the United States against Mexico, this independent flag was pulled down, and the stars and stripes of this Union hoisted in its stead. So, Sir, before the war was over, the forces of the United States, military and naval, had possession of San Francisco and Upper California, and a great rush of emigrants from various parts of the world took place into California in 1846 and 1847. But now behold another wonder.

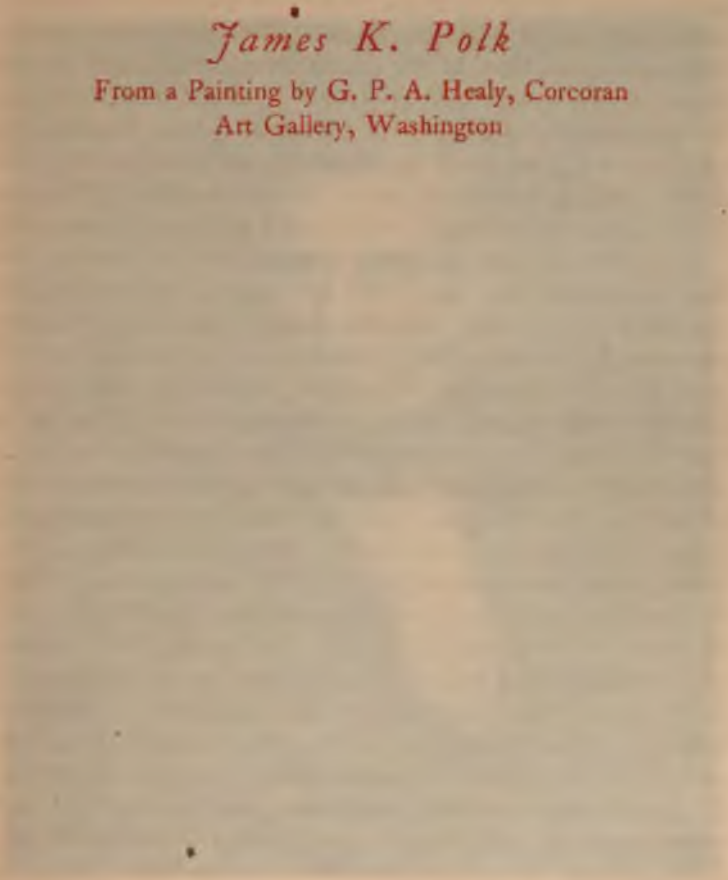
In January of 1848, a party of Mormons made a discovery

of an extraordinarily rich mine of gold, or rather of a great quantity of gold, hardly proper to be called a mine, for it was spread near the surface, on the lower part of the south, or American, branch of the Sacramento. They attempted to conceal their discovery for some time; but soon another discovery of gold, perhaps of greater importance, was made, on another part of the American branch of the Sacramento, and near Sutter's Fort, as it is called. The fame of these discoveries spread far and wide. They inflamed more and more the spirit of emigration towards California, which had already been excited; and adventurers crowded into the country by hundreds, and flocked towards the Bay of San Francisco. This, as I have said, took place in the winter and spring of 1848. The digging commenced in the spring of that year, and from that time to this the work of searching for gold has been prosecuted with a success not heretofore known in the history of this globe. You recollect, Sir, how incredulous at first the American public was at the accounts which reached us of these discoveries; but we all know, now, that these accounts received, and continue to receive, daily confirmation, and down to the present moment I suppose the assurance is as strong, after the experience of these several months, of the existence of deposits of gold apparently inexhaustible in the regions near San Francisco, in California, as it was at any period of the earlier dates of the accounts.

It so happened, Sir, that although, after the return of peace, it became a very important subject for legislative consideration and legislative decision to provide a proper territorial government for California, yet differences of opinion between the two houses of Congress prevented the establishment of any such territorial government at the last session. Under this state of things, the inhabitants of California, already amounting to a considerable number, thought it to be their duty, in the summer of last year, to establish a local government. Under the proclamation of General Riley, the people chose delegates to a convention, and that convention met at Monterey. It formed a constitution for the State of California, which, being referred to the people, was adopted by them in their primary assemblages. Desirous of immediate connection with the United States, its Senators were appointed and representatives cho-

sen, who have come hither, bringing with them the authentic constitution of the State of California; and they now present themselves, asking, in behalf of their constituents, that it may be admitted into this Union as one of the United States. This constitution, Sir, contains an express prohibition of slavery, or involuntary servitude, in the State of California. It is said, and I suppose truly, that, of the members who composed that convention, some sixteen were natives of, and had been residents in, the slave-holding States, about twenty-two were from the non-slave-holding States, and the remaining ten members were either native Californians or old settlers in that country. This prohibition of slavery, it is said, was inserted with entire unanimity.

It is this circumstance, Sir, the prohibition of slavery, which has contributed to raise, I do not say it has wholly raised, the dispute as to the propriety of the admission of California into the Union under this constitution. It is not to be denied, Mr. President, nobody thinks of denying, that, whatever reasons were assigned at the commencement of the late war with Mexico, it was prosecuted for the purpose of the acquisition of territory, and under the alleged argument that the cession of territory was the only form in which proper compensation could be obtained by the United States from Mexico, for the various claims and demands which the people of this country had against that government. At any rate, it will be found that President Polk's message, at the commencement of the session of December, 1847, avowed that the war was to be prosecuted until some acquisition of territory should be made. As the acquisition was to be south of the line of the United States, in warm climates and countries, it was naturally, I suppose, expected by the South, that whatever acquisitions were made in that region would be added to the slave-holding portion of the United States. Very little of accurate information was possessed of the real physical character, either of California or New Mexico, and events have not turned out as was expected. Both California and New Mexico are likely to come in as free States; and therefore some degree of disappointment and surprise has resulted. In other words, it is obvious that the question which has so long harassed the country, and at some times very seriously alarmed the minds of wise and good men, has come upon us for a fresh discussion; the question of slavery in these United States.



James K. Polk

From a Painting by G. P. A. Healy, Corcoran Art Gallery, Washington

Now, Sir, I propose, perhaps at the expense of some detail and consequent detention of the Senate, to review historically this question, which, partly in consequence of its own importance, and partly, perhaps mostly, in consequence of the manner in which it has been discussed in different portions of the country, has been a source of so much alienation and unkind feeling between them.

We all know, Sir, that slavery has existed in the world from time immemorial. There was slavery, in the earliest periods of history, among the Oriental nations. There was slavery among the Jews; the theocratic government of that people issued no injunction against it. There was slavery among the Greeks; and the ingenious philosophy of the Greeks found, or sought to find, a justification for it exactly upon the grounds which have been assumed for such a justification in this country; that is, a natural and original difference among the races of mankind, and the inferiority of the black or colored race to the white. The Greeks justified their system of slavery upon that idea, precisely. They held the African and some of the Asiatic tribes to be inferior to the white race; but they did not show, I think, by any close process of logic, that, if this were true, the more intelligent and the stronger had therefore a right to subjugate the weaker.

The more manly philosophy and jurisprudence of the Romans placed the justification of slavery on entirely different grounds. The Roman jurists, from the first and down to the fall of the empire, admitted that slavery was against the natural law, by which, as they maintained, all men, of whatsoever clime, color, or capacity, were equal; but they justified slavery, first, upon the ground and authority of the law of nations, arguing, and arguing truly, that at that day the conventional law of nations admitted that captives in war, whose lives, according to the notions of the times, were at the absolute disposal of the captors, might, in exchange for exemption from death, be made slaves for life, and that such servitude might descend to their posterity. The jurists of Rome also maintained, that, by the civil law, there might be servitude or slavery, personal and hereditary; first, by the voluntary act of an individual, who might sell himself into slavery; secondly, by his being reduced into a state of slavery by his creditors, in satisfaction of his debts;

and, thirdly, by being placed in a state of servitude or slavery for crime. At the introduction of Christianity, the Roman world was full of slaves, and I suppose there is to be found no injunction against that relation between man and man in the teachings of the Gospel of Jesus Christ or of any of his Apostles. The object of the instruction imparted to mankind by the founder of Christianity was to touch the heart, purify the soul, and improve the lives of individual men. That object went directly to the first fountain of all the political and social relations of the human race, as well as of all true religious feeling, the individual heart and mind of man.

Now, Sir, upon the general nature and influence of slavery there exists a wide difference of opinion between the northern portion of this country and the southern. It is said on the one side, that, although not the subject of any injunction or direct prohibition in the New Testament, slavery is a wrong; that it is founded merely in the right of the strongest; and that it is an oppression, like unjust wars, like all those conflicts by which a powerful nation subjects a weaker to its will; and that, in its nature, whatever may be said of it in the modifications which have taken place, it is not according to the meek spirit of the Gospel. It is not "kindly affectioned"; it does not "seek another's, and not its own"; it does not "let the oppressed go free." These are sentiments that are cherished, and of late with greatly augmented force, among the people of the Northern States. They have taken hold of the religious sentiment of that part of the country, as they have, more or less, taken hold of the religious feelings of a considerable portion of mankind. The South, upon the other side, having been accustomed to this relation between the two races all their lives, from their birth, having been taught, in general, to treat the subjects of this bondage with care and kindness, and I believe, in general, feeling great kindness for them, have not taken the view of the subject which I have mentioned. There are thousands of religious men, with consciences as tender as any of their brethren at the North, who do not see the unlawfulness of slavery; and there are more thousands, perhaps, that, whatsoever they may think of it in its origin, and as a matter depending upon natural right, yet take things as they are, and, finding slavery to be an established re-

lation of the society in which they live, can see no way in which, let their opinions on the abstract question be what they may, it is in the power of the present generation to relieve themselves from this relation. And candor obliges me to say, that I believe they are just as conscientious, many of them, and the religious people, all of them, as they are at the North who hold different opinions.

The honorable Senator from South Carolina* the other day alluded to the separation of that great religious community, the Methodist Episcopal Church. That separation was brought about by differences of opinion upon this particular subject of slavery. I felt great concern, as that dispute went on, about the result. I was in hopes that the difference of opinion might be adjusted, because I looked upon that religious denomination as one of the great props of religion and morals throughout the whole country, from Maine to Georgia, and westward to our utmost western boundary. The result was against my wishes and against my hopes. I have read all their proceedings and all their arguments; but I have never yet been able to come to the conclusion that there was any real ground for that separation; in other words, that any good could be produced by that separation. I must say I think there was some want of candor and charity. Sir, when a question of this kind seizes on the religious sentiments of mankind, and comes to be discussed in religious assemblies of the clergy and laity, there is always to be expected, or always to be feared, a great degree of excitement. It is in the nature of man, manifested by his whole history, that religious disputes are apt to become warm in proportion to the strength of the convictions which men entertain of the magnitude of the questions at issue. In all such disputes, there will sometimes be found men with whom every thing is absolute; absolutely wrong, or absolutely right. They see the right clearly; they think others ought so to see it, and they are disposed to establish a broad line of distinction between what is right and what is wrong. They are not seldom willing to establish that line upon their own convictions of truth and justice; and are ready to mark and guard it by placing along it a series of dogmas, as lines of

* Mr. Calhoun.

boundary on the earth's surface are marked by posts and stones. There are men who, with clear perceptions, as they think, of their own duty, do not see how too eager a pursuit of one duty may involve them in the violation of others, or how too warm an embracement of one truth may lead to a disregard of other truths equally important. As I heard it stated strongly, not many days ago, these persons are disposed to mount upon some particular duty, as upon a war-horse, and to drive furiously on and upon and over all other duties that may stand in the way. There are men who, in reference to disputes of that sort, are of opinion that human duties may be ascertained with the exactness of mathematics. They deal with morals as with mathematics; and they think what is right may be distinguished from what is wrong with the precision of an algebraic equation. They have, therefore, none too much charity towards others who differ from them. They are apt, too, to think that nothing is good but what is perfect, and that there are no compromises or modifications to be made in consideration of difference of opinion or in deference to other men's judgment. If their perspicacious vision enables them to detect a spot on the face of the sun, they think that a good reason why the sun should be struck down from heaven. They prefer the chance of running into utter darkness to living in heavenly light, if that heavenly light be not absolutely without any imperfection. There are impatient men; too impatient always to give heed to the admonition of St. Paul, that we are not to "do evil that good may come"; too impatient to wait for the slow progress of moral causes in the improvement of mankind. They do not remember that the doctrines and the miracles of Jesus Christ have, in eighteen hundred years, converted only a small portion of the human race; and among the nations that are converted to Christianity, they forget how many vices and crimes, public and private, still prevail, and that many of them, public crimes especially, which are so clearly offences against the Christian religion, pass without exciting particular indignation. Thus wars are waged, and unjust wars. I do not deny that there may be just wars. There certainly are; but it was the remark of an eminent person, not many years ago, on the other side of the Atlantic, that it is one of the greatest reproaches to human

nature that wars are sometimes just. The defence of nations sometimes causes a just war against the injustice of other nations. In this state of sentiment upon the general nature of slavery lies the cause of a great part of those unhappy divisions, exasperations, and reproaches which find vent and support in different parts of the Union.

But we must view things as they are. Slavery does exist in the United States. It did exist in the States before the adoption of this Constitution, and at that time. Let us, therefore, consider for a moment what was the state of sentiment, North and South, in regard to slavery, at the time this Constitution was adopted. A remarkable change has taken place since; but what did the wise and great men of all parts of the country think of slavery then? In what estimation did they hold it at the time when this Constitution was adopted? It will be found, Sir, if we will carry ourselves by historical research back to that day, and ascertain men's opinions by authentic records still existing among us, that there was then no diversity of opinion between the North and the South upon the subject of slavery. It will be found that both parts of the country held it equally an evil, a moral and political evil. It will not be found that, either at the North or at the South, there was much, though there was some, invective against slavery as inhuman and cruel. The great ground of objection to it was political; that it weakened the social fabric; that, taking the place of free labor, society became less strong and labor less productive; and therefore we find from all the eminent men of the time the clearest expression of their opinion that slavery is an evil. They ascribed its existence here, not without truth, and not without some acerbity of temper and force of language, to the injurious policy of the mother country, who, to favor the navigator, had entailed these evils upon the Colonies. I need hardly refer, Sir, particularly to the publications of the day. They are matters of history on the record. The eminent men, the most eminent men, and nearly all the conspicuous politicians of the South, held the same sentiments; that slavery was an evil, a blight, a scourge, and a curse. There are no terms of reprobation of slavery so vehement in the North at that day as in the South. The North was not so much excited against it as the South; and the

reason is, I suppose, that there was much less of it at the North, and the people did not see, or think they saw, the evils so prominently as they were seen, or thought to be seen, at the South.

Then, Sir, when this Constitution was framed, this was the light in which the Federal Convention viewed it. That body reflected the judgment and sentiments of the great men of the South. A member of the other house, whom I have not the honor to know, has, in a recent speech, collected extracts from these public documents. They prove the truth of what I am saying, and the question then was, how to deal with it, and how to deal with it as an evil. They came to this general result. They thought that slavery could not be continued in the country if the importation of slaves were made to cease, and therefore they provided that, after a certain period, the importation might be prevented by the act of the new government. The period of twenty years was proposed by some gentleman from the North, I think, and many members of the Convention from the South opposed it as being too long. Mr. Madison especially was somewhat warm against it. He said it would bring too much of this mischief into the country to allow the importation of slaves for such a period. Because we must take along with us, in the whole of this discussion, when we are considering the sentiments and opinions in which the constitutional provision originated, that the conviction of all men was, that, if the importation of slaves ceased, the white race would multiply faster than the black race, and that slavery would therefore gradually wear out and expire. It may not be improper here to allude to that, I had almost said, celebrated opinion of Mr. Madison. You observe, Sir, that the term *slave*, or *slavery*, is not used in the Constitution. The Constitution does not require that "fugitive slaves" shall be delivered up. It requires that persons held to service in one State, and escaping into another, shall be delivered up. Mr. Madison opposed the introduction of the term *slave*, or *slavery*, into the Constitution; for he said that he did not wish to see it recognized by the Constitution of the United States of America that there could be property in men.

Now, Sir, all this took place in the Convention in 1787; but

connected with this, concurrent and contemporaneous, is another important transaction, not sufficiently attended to. The Convention for framing this Constitution assembled in Philadelphia in May, and sat until September, 1787. During all that time the Congress of the United States was in session at New York. It was a matter of design, as we know, that the Convention should not assemble in the same city where Congress was holding its sessions. Almost all the public men of the country, therefore, of distinction and eminence, were in one or the other of these two assemblies; and I think it happened, in some instances, that the same gentlemen were members of both bodies. If I mistake not, such was the case with Mr. Rufus King, then a member of Congress from Massachusetts. Now, at the very time when the Convention in Philadelphia was framing this Constitution, the Congress in New York was framing the Ordinance of 1787, for the organization and government of the territory northwest of the Ohio. They passed that Ordinance on the 13th of July, 1787, at New York, the very month, perhaps the very day, on which these questions about the importation of slaves and the character of slavery were debated in the Convention at Philadelphia. So far as we can now learn, there was a perfect concurrence of opinion between these two bodies; and it resulted in this Ordinance of 1787, excluding slavery from all the territory over which the Congress of the United States had jurisdiction, and that was all the territory northwest of the Ohio. Three years before, Virginia and other States had made a cession of that great territory to the United States; and a most munificent act it was. I never reflect upon it without a disposition to do honor and justice, and justice would be the highest honor, to Virginia, for the cession of her northwestern territory. I will say, Sir, it is one of her fairest claims to the respect and gratitude of the country, and that, perhaps, it is only second to that other claim which belongs to her; that from her counsels, and from the intelligence and patriotism of her leading statesmen, proceeded the first idea put into practice of the formation of a general constitution of the United States. The Ordinance of 1787 applied to the whole territory over which the Congress of the United States had jurisdiction. It was adopted two years before the Constitution of the United

States went into operation; because the Ordinance took effect immediately on its passage, while the Constitution of the United States, having been framed, was to be sent to the States to be adopted by their Conventions; and then a government was to be organized under it. This Ordinance, then, was in operation and force when the Constitution was adopted, and the government put in motion, in April, 1789.

Mr. President, three things are quite clear as historical truths. One is, that there was an expectation that, on the ceasing of the importation of slaves from Africa, slavery would begin to run out here. That was hoped and expected. Another is, that, as far as there was any power in Congress to prevent the spread of slavery in the United States, that power was executed in the most absolute manner, and to the fullest extent. An honorable member,* whose health does not allow him to be here to-day —

A Senator. He is here.

I am very happy to hear that he is; may he long be here, and in the enjoyment of health to serve his country! The honorable member said, the other day, that he considered this Ordinance as the first in the series of measures calculated to enfeeble the South, and deprive them of their just participation in the benefits and privileges of this government. He says, very properly, that it was enacted under the old Confederation, and before this Constitution went into effect; but my present purpose is only to say, Mr. President, that it was established with the entire and unanimous concurrence of the whole South. Why, there it stands! The vote of every State in the Union was unanimous in favor of the Ordinance, with the exception of a single individual vote, and that individual vote was given by a Northern man. This Ordinance prohibiting slavery for ever northwest of the Ohio has the hand and seal of every Southern member in Congress. It was therefore no aggression of the North on the South. The other and third clear historical truth is, that the Convention meant to leave slavery in the States as they found it, entirely under the authority and control of the States themselves.

This was the state of things, Sir, and this the state of opin-

* Mr. Calhoun.

ion, under which those very important matters were arranged, and those three important things done; that is, the establishment of the Constitution of the United States with a recognition of slavery as it existed in the States; the establishment of the ordinance for the government of the Northwestern Territory, prohibiting, to the full extent of all territory owned by the United States, the introduction of slavery into that territory, while leaving to the States all power over slavery in their own limits; and creating a power, in the new government, to put an end to the importation of slaves, after a limited period. There was entire coincidence and concurrence of sentiment between the North and the South, upon all these questions, at the period of the adoption of the Constitution. But opinions, Sir, have changed, greatly changed; changed North and changed South. Slavery is not regarded in the South now as it was then. I see an honorable member of this body paying me the honor of listening to my remarks;* he brings to my mind, Sir, freshly and vividly, what I have learned of his great ancestor, so much distinguished in his day and generation, so worthy to be succeeded by so worthy a grandson, and of the sentiments he expressed in the Convention in Philadelphia.†

Here we may pause. There was, if not an entire unanimity, a general concurrence of sentiment running through the whole community, and especially entertained by the eminent men of all parts of the country. But soon a change began, at the North and the South, and a difference of opinion showed itself; the North growing much more warm and strong against slavery, and the South growing much more warm and strong in its support. Sir, there is no generation of mankind whose opinions are not subject to be influenced by what appear to them to be their present emergent and exigent interests. I impute to the South no particularly selfish view in the change which has come over her. I impute to her certainly no dishonest view. All that has happened has been natural. It has followed those causes which always influence the human mind and operate upon it. What, then, have been the causes which have created so new a feeling in favor of slavery in the South, which have changed the

* Mr. Mason of Virginia.
† See Madison Papers, Vol. III. pp. 1390, 1428, *et seq.*

whole nomenclature of the South on that subject, so that, from being thought and described in the terms I have mentioned and will not repeat, it has now become an institution, a cherished institution, in that quarter; no evil, no scourge, but a great religious, social, and moral blessing, as I think I have heard it latterly spoken of? I suppose this, Sir, is owing to the rapid growth and sudden extension of the COTTON plantations of the South. So far as any motive consistent with honor, justice, and general judgment could act, it was the COTTON interest that gave a new desire to promote slavery, to spread it, and to use its labor. I again say that this change was produced by causes which must always produce like effects. The whole interest of the South became connected, more or less, with the extension of slavery. If we look back to the history of the commerce of this country in the early years of this government, what were our exports? Cotton was hardly, or but to a very limited extent, known. In 1791 the first parcel of cotton of the growth of the United States was exported, and amounted only to 19,200 pounds.* It has gone on increasing rapidly, until the whole crop may now, perhaps, in a season of great product and high prices, amount to a hundred millions of dollars. In the years I have mentioned, there was more of wax, more of indigo, more of rice, more of almost every article of export from the South, than of cotton. When Mr. Jay negotiated the treaty of 1794 with England, it is evident from the twelfth article of the treaty, which was suspended by the Senate, that he did not know that cotton was exported at all from the United States.

Well, Sir, we know what followed. The age of cotton became the golden age of our Southern brethren. It gratified their desire for improvement and accumulation, at the same time that it excited it. The desire grew by what it fed upon, and there soon came to be an eagerness for other territory, a new area or new areas for the cultivation of the cotton crop; and measures leading to this result were brought about rapidly, one after another, under the lead of Southern men at the head of the government, they having a majority in both branches of Congress to

* Seybert's Statistics, p. 99. A small parcel of cotton found its way to Liverpool from the United States in 1784, and was refused admission, on the ground that it could not be the growth of the United States.

accomplish their ends. The honorable member from South Carolina* observed that there has been a majority all along in favor of the North. If that be true, Sir, the North has acted either very liberally and kindly, or very weakly; for they never exercised that majority efficiently five times in the history of the government, when a division or trial of strength arose. Never. Whether they were out-generalled, or whether it was owing to other causes, I shall not stop to consider; but no man acquainted with the history of the Union can deny that the general lead in the politics of the country, for three fourths of the period that has elapsed since the adoption of the Constitution, has been a Southern lead.

In 1802, in pursuit of the idea of opening a new cotton region, the United States obtained a cession from Georgia of the whole of her western territory, now embracing the rich and growing States of Alabama and Mississippi. In 1803 Louisiana was purchased from France, out of which the States of Louisiana, Arkansas, and Missouri have been framed, as slave-holding States. In 1819 the cession of Florida was made, bringing in another region adapted to cultivation by slaves. Sir, the honorable member from South Carolina thought he saw in certain operations of the government, such as the manner of collecting the revenue, and the tendency of measures calculated to promote emigration into the country, what accounts for the more rapid growth of the North than the South. He ascribes that more rapid growth, not to the operation of time, but to the system of government and administration established under this Constitution. That is matter of opinion. To a certain extent it may be true; but it does seem to me that, if any operation of the government can be shown in any degree to have promoted the population, and growth, and wealth of the North, it is much more sure that there are sundry important and distinct operations of the government, about which no man can doubt, tending to promote, and which absolutely have promoted, the increase of the slave interest and the slave territory of the South. It was not time that brought in Louisiana; it was the act of men. It was not time that brought in Florida; it was the act of men. And lastly, Sir, to complete those acts of legislation

* Mr. Calhoun.

which have contributed so much to enlarge the area of the institution of slavery, Texas, great and vast and illimitable Texas, was added to the Union as a slave State in 1845; and that, Sir, pretty much closed the whole chapter, and settled the whole account.

That closed the whole chapter and settled the whole account, because the annexation of Texas, upon the conditions and under the guaranties upon which she was admitted, did not leave within the control of this government an acre of land, capable of being cultivated by slave labor, between this Capitol and the Rio Grande or the Nueces, or whatever is the proper boundary of Texas; not an acre. From that moment, the whole country, from this place to the western boundary of Texas, was fixed, pledged, fastened, decided, to be slave territory for ever, by the solemn guaranties of law. And I now say, Sir, as the proposition upon which I stand this day, and upon the truth and firmness of which I intend to act until it is overthrown, that there is not at this moment within the United States, or any territory of the United States, a single foot of land, the character of which, in regard to its being free territory or slave territory, is not fixed by some law, and some irrepealable law, beyond the power of the action of the government. Is it not so with respect to Texas? It is most manifestly so. The honorable member from South Carolina, at the time of the admission of Texas, held an important post in the executive department of the government; he was Secretary of State. Another eminent person of great activity and adroitness in affairs, I mean the late Secretary of the Treasury,* was a conspicuous member of this body, and took the lead in the business of annexation, in coöperation with the Secretary of State; and I must say that they did their business faithfully and thoroughly; there was no botch left in it. They rounded it off, and made as close joiner-work as ever was exhibited. Resolutions of annexation were brought into Congress, fitly joined together, compact, efficient, conclusive upon the great object which they had in view, and those resolutions passed.

Allow me to read a part of these resolutions. It is the third clause of the second section of the resolution of the 1st of March,

* Mr. Walker.

1845, for the admission of Texas, which applies to this part of the case. That clause is as follows:—

"New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri Compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire; and in such State or States as shall be formed out of said territory north of said Missouri Compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

Now, what is here stipulated, enacted, and secured? It is, that all Texas south of 36° 30′, which is nearly the whole of it, shall be admitted into the Union as a slave State. It was a slave State, and therefore came in as a slave State; and the guaranty is, that new States shall be made out of it, to the number of four, in addition to the State then in existence and admitted at that time by these resolutions, and that such States as are formed out of that portion of Texas lying south of 36° 30′ may come in as slave States. I know no form of legislation which can strengthen this. I know no mode of recognition that can add a tittle of weight to it. I listened respectfully to the resolutions of my honorable friend from Tennessee.* He proposed to recognize that stipulation with Texas. But any additional recognition would weaken the force of it; because it stands here on the ground of a contract, a thing done for a consideration. It is a law founded on a contract with Texas, and designed to carry that contract into effect. A recognition now, founded not on any consideration or any contract, would not be so strong as it now stands on the face of the resolution. I know no way, I candidly confess, in which this government, acting in good faith, as I trust it always will, can relieve itself from that stipulation and pledge, by any honest course of legislation whatever. And therefore I say again, that, so far as Texas is concerned, in the whole of that State

* Mr. Bell.

south of 36° 30′, which, I suppose, embraces all the territory capable of slave cultivation, there is no land, not an acre, the character of which is not established by law; a law which cannot be repealed without the violation of a contract, and plain disregard of the public faith.

I hope, Sir, it is now apparent that my proposition, so far as it respects Texas, has been maintained, and that the provision in this article is clear and absolute; and it has been well suggested by my friend from Rhode Island,* that that part of Texas which lies north of 36° 30′ of north latitude, and which may be formed into free States, is dependent, in like manner, upon the consent of Texas, herself a slave State.

Now, Sir, how came this? How came it to pass that within these walls, where it is said by the honorable member from South Carolina that the free States have always had a majority, this resolution of annexation, such as I have described it, obtained a majority in both houses of Congress? Sir, it obtained that majority by the great number of Northern votes added to the entire Southern vote, or at least nearly the whole of the Southern vote. The aggregate was made up of Northern and Southern votes. In the House of Representatives there were about eighty Southern votes and about fifty Northern votes for the admission of Texas. In the Senate the vote for the admission of Texas was twenty-seven, and twenty-five against it; and of those twenty-seven votes, constituting the majority, no less than thirteen came from the free States, and four of them were from New England. The whole of these thirteen Senators, constituting within a fraction, you see, one half of all the votes in this body for the admission of this immeasurable extent of slave territory, were sent here by free States.

Sir, there is not so remarkable a chapter in our history of political events, political parties, and political men as is afforded by this admission of a new slave-holding territory, so vast that a bird cannot fly over it in a week. New England, as I have said, with some of her own votes, supported this measure. Three fourths of the votes of liberty-loving Connecticut were given for it in the other house, and one half here. There

* Mr. Greene.

was one vote for it from Maine, but, I am happy to say, not the vote of the honorable member who addressed the Senate the day before yesterday,* and who was then a Representative from Maine in the House of Representatives; but there was one vote from Maine, ay, and there was one vote for it from Massachusetts, given by a gentleman then representing, and now living in, the district in which the prevalence of Free Soil sentiment for a couple of years or so has defeated the choice of any member to represent it in Congress. Sir, that body of Northern and Eastern men who gave those votes at that time are now seen taking upon themselves, in the nomenclature of politics, the appellation of the Northern Democracy. They undertook to wield the destinies of this empire, if I may give that name to a republic, and their policy was, and they persisted in it, to bring into this country and under this government all the territory they could. They did it, in the case of Texas, under pledges, absolute pledges, to the slave interest, and they afterwards lent their aid in bringing in these new conquests, to take their chance for slavery or freedom. My honorable friend from Georgia,† in March, 1847, moved the Senate to declare that the war ought not to be prosecuted for the conquest of territory, or for the dismemberment of Mexico. The whole of the Northern Democracy voted against it. He did not get a vote from them. It suited the patriotic and elevated sentiments of the Northern Democracy to bring in a world from among the mountains and valleys of California and New Mexico, or any other part of Mexico, and then quarrel about it; to bring it in, and then endeavor to put upon it the saving grace of the Wilmot Proviso. There were two eminent and highly respectable gentlemen from the North and East, then leading gentlemen in the Senate, (I refer, and I do so with entire respect, for I entertain for both of those gentlemen, in general, high regard, to Mr. Dix of New York and Mr. Niles of Connecticut,) who both voted for the admission of Texas. They would not have that vote any other way than as it stood; and they would have it as it did stand. I speak of the vote upon the annexation of Texas. Those two gentlemen would have the resolution of annexation just as it is, without amend-

* Mr. Hamlin. † Mr. Berrien.

ment; and they voted for it just as it is, and their eyes were all open to its true character. The honorable member from South Carolina who addressed us the other day was then Secretary of State. His correspondence with Mr. Murphy, the Chargé d'Affaires of the United States in Texas, had been published. That correspondence was all before those gentlemen, and the Secretary had the boldness and candor to avow in that correspondence, that the great object sought by the annexation of Texas was to strengthen the slave interest of the South. Why, Sir, he said so in so many words ——

MR. CALHOUN. Will the honorable Senator permit me to interrupt him for a moment?

Certainly.

MR. CALHOUN. I am very reluctant to interrupt the honorable gentleman; but, upon a point of so much importance, I deem it right to put myself *rectus in curia*. I did not put it upon the ground assumed by the Senator. I put it upon this ground: that Great Britain had announced to this country, in so many words, that her object was to abolish slavery in Texas, and, through Texas, to accomplish the abolition of slavery in the United States and the world. The ground I put it on was, that it would make an exposed frontier, and, if Great Britain succeeded in her object, it would be impossible that that frontier could be secured against the aggressions of the Abolitionists; and that this government was bound, under the guaranties of the Constitution, to protect us against such a state of things.

That comes, I suppose, Sir, to exactly the same thing. It was, that Texas must be obtained for the security of the slave interest of the South.

MR. CALHOUN. Another view is very distinctly given.

That was the object set forth in the correspondence of a worthy gentleman not now living,* who preceded the honorable member from South Carolina in the Department of State. There repose on the files of the Department, as I have occasion to know, strong letters from Mr. Upshur to the United States minister in England, and I believe there are some to the same minister from the honorable Senator himself, asserting to this effect the sentiments of this government; namely, that Great

* Mr. Upshur.

Britain was expected not to interfere to take Texas out of the hands of its then existing government and make it a free country. But my argument, my suggestion, is this; that those gentlemen who composed the Northern Democracy when Texas was brought into the Union saw clearly that it was brought in as a slave country, and brought in for the purpose of being maintained as slave territory, to the Greek Kalends. I rather think the honorable gentleman who was then Secretary of State might, in some of his correspondence with Mr. Murphy, have suggested that it was not expedient to say too much about this object, lest it should create some alarm. At any rate, Mr. Murphy wrote to him that England was anxious to get rid of the constitution of Texas, because it was a constitution establishing slavery; and that what the United States had to do was to aid the people of Texas in upholding their constitution; but that nothing should be said which should offend the fanatical men of the North. But, Sir, the honorable member did avow this object himself, openly, boldly, and manfully; he did not disguise his conduct or his motives.

MR. CALHOUN. Never, never.

What he means he is very apt to say.

MR. CALHOUN. Always, always.

And I honor him for it.

This admission of Texas was in 1845. Then, in 1847, *flagrante bello* between the United States and Mexico, the proposition I have mentioned was brought forward by my friend from Georgia, and the Northern Democracy voted steadily against it. Their remedy was to apply to the acquisitions, after they should come in, the Wilmot Proviso. What follows? These two gentlemen,* worthy and honorable and influential men, (and if they had not been they could not have carried the measure,) these two gentlemen, members of this body, brought in Texas, and by their votes they also prevented the passage of the resolution of the honorable member from Georgia, and then they went home and took the lead in the Free Soil party. And there they stand, Sir! They leave us here, bound

* Messrs. Niles of Connecticut and Dix of New York.

in honor and conscience by the resolutions of annexation; they leave us here, to take the odium of fulfilling the obligations in favor of slavery which they voted us into, or else the greater odium of violating those obligations, while they are at home making capital and rousing speeches for free soil and no slavery. And therefore I say, Sir, that there is not a chapter in our history, respecting public measures and public men, more full of what would create surprise, more full of what does create, in my mind, extreme mortification, than that of the conduct of the Northern Democracy on this subject.

Mr. President, sometimes, when a man is found in a new relation to things around him and to other men, he says the world has changed, and that he has not changed. I believe, Sir, that our self-respect leads us often to make this declaration in regard to ourselves when it is not exactly true. An individual is more apt to change, perhaps, than all the world around him. But, under the present circumstances, and under the responsibility which I know I incur by what I am now stating here, I feel at liberty to recur to the various expressions and statements, made at various times, of my own opinions and resolutions respecting the admission of Texas, and all that has followed. Sir, as early as 1836, or in the early part of 1837, there was conversation and correspondence between myself and some private friends on this project of annexing Texas to the United States; and an honorable gentleman with whom I have had a long acquaintance, a friend of mine, now perhaps in this chamber, I mean General Hamilton, of South Carolina, was privy to that correspondence. I had voted for the recognition of Texan independence, because I believed it to be an existing fact, surprising and astonishing as it was, and I wished well to the new republic; but I manifested from the first utter opposition to bringing her, with her slave territory, into the Union. I happened, in 1837, to make a public address to political friends in New York, and I then stated my sentiments upon the subject. It was the first time that I had occasion to advert to it; and I will ask a friend near me to have the kindness to read an extract from the speech made by me on that occasion. It was delivered in Niblo's Garden, in 1837.

Mr. Greene then read the following extract from the speech of Mr. Webster to which he referred:—

"Gentlemen, we all see that, by whomsoever possessed, Texas is likely to be a slave-holding country; and I frankly avow my entire unwillingness to do any thing which shall extend the slavery of the African race on this continent, or add other slave-holding States to the Union. When I say that I regard slavery in itself as a great moral, social, and political evil, I only use language which has been adopted by distinguished men, themselves citizens of slave-holding States. I shall do nothing, therefore, to favor or encourage its further extension. We have slavery already amongst us. The Constitution found it in the Union; it recognized it, and gave it solemn guaranties. To the full extent of these guaranties we are all bound, in honor, in justice, and by the Constitution. All the stipulations contained in the Constitution in favor of the slave-holding States which are already in the Union ought to be fulfilled, and, so far as depends on me, shall be fulfilled, in the fulness of their spirit, and to the exactness of their letter. Slavery, as it exists in the States, is beyond the reach of Congress. It is a concern of the States themselves; they have never submitted it to Congress, and Congress has no rightful power over it. I shall concur, therefore, in no act, no measure, no menace, no indication of purpose, which shall interfere or threaten to interfere with the exclusive authority of the several States over the subject of slavery as it exists within their respective limits. All this appears to me to be matter of plain and imperative duty.

"But when we come to speak of admitting new States, the subject assumes an entirely different aspect. Our rights and our duties are then both different. . . . . .

"I see, therefore, no political necessity for the annexation of Texas to the Union; no advantages to be derived from it; and objections to it of a strong, and, in my judgment, decisive character."

I have nothing, Sir, to add to, or to take from, those sentiments. That speech, the Senate will perceive, was made in 1837. The purpose of immediately annexing Texas at that time was abandoned or postponed; and it was not revived with any vigor for some years. In the mean time it happened that I had become a member of the executive administration, and was for a short period in the Department of State. The annexation of Texas was a subject of conversation, not confidential, with the President and heads of departments, as well as with other public men. No serious attempt was then made, however, to bring it about. I left the Department of State in May, 1843, and shortly after I learned, though by means which

were no way connected with official information, that a design had been taken up of bringing Texas, with her slave territory and population, into this Union. I was in Washington at the time, and persons are now here who will remember that we had an arranged meeting for conversation upon it. I went home to Massachusetts and proclaimed the existence of that purpose, but I could get no audience and but little attention. Some did not believe it, and some were too much engaged in their own pursuits to give it any heed. They had gone to their farms or to their merchandise, and it was impossible to arouse any feeling in New England, or in Massachusetts, that should combine the two great political parties against this annexation; and, indeed, there was no hope of bringing the Northern Democracy into that view, for their leaning was all the other way. But, Sir, even with Whigs, and leading Whigs, I am ashamed to say, there was a great indifference towards the admission of Texas, with slave territory, into this Union.

The project went on. I was then out of Congress. The annexation resolutions passed on the 1st of March, 1845; the legislature of Texas complied with the conditions and accepted the guaranties; for the language of the resolution is, that Texas is to come in "upon the conditions and under the guaranties herein prescribed." I was returned to the Senate in March, 1845, and was here in December following, when the acceptance by Texas of the conditions proposed by Congress was communicated to us by the President, and an act for the consummation of the union was laid before the two houses. The connection was then not completed. A final law, doing the deed of annexation ultimately, had not been passed; and when it was put upon its final passage here, I expressed my opposition to it, and recorded my vote in the negative; and there that vote stands, with the observations that I made upon that occasion.* Nor is this the only occasion on which I have expressed myself to the same effect. It has happened that, between 1837 and this time, on various occasions, I have expressed my entire opposition to the admission of slave States, or the acquisition of new slave territories, to be added to the United States. I know, Sir, no change in my own sentiments, or my own pur-

* See the remarks on the Admission of Texas, Volume IX.

poses, in that respect. I will now ask my friend from Rhode Island to read another extract from a speech of mine made at a Whig Convention in Springfield, Massachusetts, in the month of September, 1847.

Mr. Greene here read the following extract: —

"We hear much just now of a *panacea* for the dangers and evils of slavery and slave annexation, which they call the 'Wilmot Proviso.' That certainly is a just sentiment, but it is not a sentiment to found any new party upon. It is not a sentiment on which Massachusetts Whigs differ. There is not a man in this hall who holds to it more firmly than I do, nor one who adheres to it more than another.

"I feel some little interest in this matter, Sir. Did not I commit myself in 1837 to the whole doctrine, fully, entirely? And I must be permitted to say that I cannot quite consent that more recent discoverers should claim the merit and take out a patent.

"I deny the priority of their invention. Allow me to say, Sir, it is not their thunder. . . . . .

"We are to use the first and the last and every occasion which offers to oppose the extension of slave power.

"But I speak of it here, as in Congress, as a political question, a question for statesmen to act upon. We must so regard it. I certainly do not mean to say that it is less important in a moral point of view, that it is not more important in many other points of view; but as a legislator, or in any official capacity, I must look at it, consider it, and decide it as a matter of political action."

On other occasions, in debates here, I have expressed my determination to vote for no acquisition, or cession, or annexation, north or south, east or west. My opinion has been, that we have territory enough, and that we should follow the Spartan maxim, "Improve, adorn what you have," seek no further. I think that it was in some observations that I made on the three-million loan bill that I avowed this sentiment. In short, Sir, it has been avowed quite as often, in as many places, and before as many assemblies, as any humble opinions of mine ought to be avowed.

But now that, under certain conditions, Texas is in the Union, with all her territory, as a slave State, with a solemn pledge, also, that, if she shall be divided into many States, those States may come in as slave States south of 36° 30′, how are we to [redacted] this subject? I know no way of honest legislation,

when the proper time comes for the enactment, but to carry into effect all that we have stipulated to do. I do not entirely agree with my honorable friend from Tennessee,* that, as soon as the time comes when she is entitled to another representative, we should create a new State. On former occasions, in creating new States out of territories, we have generally gone upon the idea that, when the population of the territory amounts to about sixty thousand, we would consent to its admission as a State. But it is quite a different thing when a State is divided, and two or more States made out of it. It does not follow in such a case that the same rule of apportionment should be applied. That, however, is a matter for the consideration of Congress, when the proper time arrives. I may not then be here; I may have no vote to give on the occasion; but I wish it to be distinctly understood, that, according to my view of the matter, this government is solemnly pledged, by law and contract, to create new States out of Texas, with her consent, when her population shall justify and call for such a proceeding, and, so far as such States are formed out of Texan territory lying south of 36° 30′, to let them come in as slave States. That is the meaning of the contract which our friends, the Northern Democracy, have left us to fulfil; and I, for one, mean to fulfil it, because I will not violate the faith of the government. What I mean to say is, that the time for the admission of new States formed out of Texas, the number of such States, their boundaries, the requisite amount of population, and all other things connected with the admission, are in the free discretion of Congress, except this; to wit, that, when new States formed out of Texas are to be admitted, they have a right, by legal stipulation and contract, to come in as slave States.

Now, as to California and New Mexico, I hold slavery to be excluded from those territories by a law even superior to that which admits and sanctions it in Texas. I mean the law of nature, of physical geography, the law of the formation of the earth. That law settles for ever, with a strength beyond all terms of human enactment, that slavery cannot exist in California or New Mexico. Understand me, Sir; I mean slavery as

* Mr Bell.

will say further, that, if a resolution or a bill were now before us, to provide a territorial government for New Mexico, I would not vote to put any prohibition into it whatever. Such a prohibition would be idle, as it respects any effect it would have upon the territory; and I would not take pains uselessly to reaffirm an ordinance of nature, nor to reënact the will of God. I would put in no Wilmot Proviso for the mere purpose of a taunt or a reproach. I would put into it no evidence of the votes of superior power, exercised for no purpose but to wound the pride, whether a just and a rational pride, or an irrational pride, of the citizens of the Southern States. I have no such object, no such purpose. They would think it a taunt, an indignity; they would think it to be an act taking away from them what they regard as a proper equality of privilege. Whether they expect to realize any benefit from it or not, they would think it at least a plain theoretic wrong; that something more or less derogatory to their character and their rights had taken place. I propose to inflict no such wound upon any body, unless something essentially important to the country, and efficient to the preservation of liberty and freedom, is to be effected. I repeat, therefore, Sir, and, as I do not propose to address the Senate often on this subject, I repeat it because I wish it to be distinctly understood, that, for the reasons stated, if a proposition were now here to establish a government for New Mexico, and it was moved to insert a provision for a prohibition of slavery, I would not vote for it.

Sir, if we were now making a government for New Mexico, and any body should propose a Wilmot Proviso, I should treat it exactly as Mr. Polk treated that provision for excluding slavery from Oregon. Mr. Polk was known to be in opinion decidedly averse to the Wilmot Proviso; but he felt the necessity of establishing a government for the Territory of Oregon. The proviso was in the bill, but he knew it would be entirely nugatory; and, since it must be entirely nugatory, since it took away no right, no describable, no tangible, no appreciable right of the South, he said he would sign the bill for the sake of enacting a law to form a government in that Territory, and let that entirely useless, and, in that connection, entirely senseless, proviso remain. Sir, we hear occasionally of the annexation

of Canada; and if there be any man, any of the Northern Democracy, or any one of the Free Soil party, who supposes it necessary to insert a Wilmot Proviso in a territorial government for New Mexico, that man would of course be of opinion that it is necessary to protect the everlasting snows of Canada from the foot of slavery by the same overspreading wing of an act of Congress. Sir, wherever there is a substantive good to be done, wherever there is a foot of land to be prevented from becoming slave territory, I am ready to assert the principle of the exclusion of slavery. I am pledged to it from the year 1837; I have been pledged to it again and again; and I will perform those pledges; but I will not do a thing unnecessarily that wounds the feelings of others, or that does discredit to my own understanding.

Now, Mr. President, I have established, so far as I proposed to do so, the proposition with which I set out, and upon which I intend to stand or fall; and that is, that the whole territory within the former United States, or in the newly acquired Mexican provinces, has a fixed and settled character, now fixed and settled by law which cannot be repealed; in the case of Texas without a violation of public faith, and by no human power in regard to California or New Mexico; that, therefore, under one or other of these laws, every foot of land in the States or in the Territories has already received a fixed and decided character.

Mr. President, in the excited times in which we live, there is found to exist a state of crimination and recrimination between the North and South. There are lists of grievances produced by each; and those grievances, real or supposed, alienate the minds of one portion of the country from the other, exasperate the feelings, and subdue the sense of fraternal affection, patriotic love, and mutual regard. I shall bestow a little attention, Sir, upon these various grievances existing on the one side and on the other. I begin with complaints of the South. I will not answer, further than I have, the general statements of the honorable Senator from South Carolina, that the North has prospered at the expense of the South in consequence of the manner of administering this government, in the collecting of its revenues, and so forth. These are disputed topics, and I

have no inclination to enter into them. But I will allude to other complaints of the South, and especially to one which has in my opinion just foundation; and that is, that there has been found at the North, among individuals and among legislators, a disinclination to perform fully their constitutional duties in regard to the return of persons bound to service who have escaped into the free States. In that respect, the South, in my judgment, is right, and the North is wrong. Every member of every Northern legislature is bound by oath, like every other officer in the country, to support the Constitution of the United States; and the article of the Constitution* which says to these States that they shall deliver up fugitives from service is as binding in honor and conscience as any other article. No man fulfils his duty in any legislature who sets himself to find excuses, evasions, escapes from this constitutional obligation. I have always thought that the Constitution addressed itself to the legislatures of the States or to the States themselves. It says that those persons escaping to other States "shall be delivered up," and I confess I have always been of the opinion that it was an injunction upon the States themselves. When it is said that a person escaping into another State, and coming therefore within the jurisdiction of that State, shall be delivered up, it seems to me the import of the clause is, that the State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained that opinion, and I entertain it now. But when the subject, some years ago, was before the Supreme Court of the United States, the majority of the judges held that the power to cause fugitives from service to be delivered up was a power to be exercised under the authority of this government. I do not know, on the whole, that it may not have been a fortunate decision. My habit is to respect the result of judicial deliberations and the solemnity of judicial decisions. As it now stands, the business of seeing that these fugitives are delivered up resides in the power of Congress and the national judicature, and my friend at the head of the Judiciary Committee† has a bill on the subject now before the Senate, which, with some amendments to it, I

* Art. IV. Sect. 2, § 2. † Mr. Mason.

propose to support, with all its provisions, to the fullest extent. And I desire to call the attention of all sober-minded men at the North, of all conscientious men, of all men who are not carried away by some fanatical idea or some false impression, to their constitutional obligations. I put it to all the sober and sound minds at the North as a question of morals and a question of conscience. What right have they, in their legislative capacity or any other capacity, to endeavor to get round this Constitution, or to embarrass the free exercise of the rights secured by the Constitution to the persons whose slaves escape from them? None at all; none at all. Neither in the forum of conscience, nor before the face of the Constitution, are they, in my opinion, justified in such an attempt. Of course it is a matter for their consideration. They probably, in the excitement of the times, have not stopped to consider of this. They have followed what seemed to be the current of thought and of motives, as the occasion arose, and they have neglected to investigate fully the real question, and to consider their constitutional obligations; which, I am sure, if they did consider, they would fulfil with alacrity. I repeat, therefore, Sir, that here is a well-founded ground of complaint against the North, which ought to be removed, which it is now in the power of the different departments of this government to remove; which calls for the enactment of proper laws authorizing the judicature of this government, in the several States, to do all that is necessary for the recapture of fugitive slaves and for their restoration to those who claim them. Wherever I go, and whenever I speak on the subject, and when I speak here I desire to speak to the whole North, I say that the South has been injured in this respect, and has a right to complain; and the North has been too careless of what I think the Constitution peremptorily and emphatically enjoins upon her as a duty.

Complaint has been made against certain resolutions that emanate from legislatures at the North, and are sent here to us, not only on the subject of slavery in this District, but sometimes recommending Congress to consider the means of abolishing slavery in the States. I should be sorry to be called upon to present any resolutions here which could not be referable to any committee or any power in Congress; and there-

fore I should be unwilling to receive from the legislature of Massachusetts any instructions to present resolutions expressive of any opinion whatever on the subject of slavery, as it exists as the present moment in the States, for two reasons: first, because I do not consider that the legislature of Massachusetts has any thing to do with it; and next, because I do not consider that I, as her representative here, have any thing to do with it. It has become, in my opinion, quite too common; and if the legislatures of the States do not like that opinion, they have a great deal more power to put it down than I have to uphold it; it has become, in my opinion, quite too common a practice for the State legislatures to present resolutions here on all subjects and to instruct us on all subjects. There is no public man that requires instruction more than I do, or who requires information more than I do, or desires it more heartily; but I do not like to have it in too imperative a shape. I took notice, with pleasure, of some remarks made upon this subject, the other day, in the Senate of Massachusetts, by a young man of talent and character, of whom the best hopes may be entertained. I mean Mr. Hillard. He told the Senate of Massachusetts that he would vote for no instructions whatever to be forwarded to members of Congress, nor for any resolutions to be offered expressive of the sense of Massachusetts as to what her members of Congress ought to do. He said that he saw no propriety in one set of public servants giving instructions and reading lectures to another set of public servants. To his own master each of them must stand or fall, and that master is his constituents. I wish these sentiments could become more common. I have never entered into the question, and never shall, as to the binding force of instructions. I will, however, simply say this: if there be any matter pending in this body, while I am a member of it, in which Massachusetts has an interest of her own not adverse to the general interests of the country, I shall pursue her instructions with gladness of heart and with all the efficiency which I can bring to the occasion. But if the question be one which affects her interest, and at the same time equally affects the interests of all the other States, I shall no more regard her particular wishes or instructions than I should regard the wishes of a man who might appoint me an arbitrator or referee to decide some question of important private

right between him and his neighbor, and then *instruct* me to decide in his favor. If ever there was a government upon earth it is this government, if ever there was a body upon earth it is this body, which should consider itself as composed by agreement of all, each member appointed by some, but organized by the general consent of all, sitting here, under the solemn obligations of oath and conscience, to do that which they think to be best for the good of the whole.

Then, Sir, there are the Abolition societies, of which I am unwilling to speak, but in regard to which I have very clear notions and opinions. I do not think them useful. I think their operations for the last twenty years have produced nothing good or valuable. At the same time, I believe thousands of their members to be honest and good men, perfectly well-meaning men. They have excited feelings; they think they must do something for the cause of liberty; and, in their sphere of action, they do not see what else they can do than to contribute to an Abolition press, or an Abolition society, or to pay an Abolition lecturer. I do not mean to impute gross motives even to the leaders of these societies, but I am not blind to the consequences of their proceedings. I cannot but see what mischiefs their interference with the South has produced. And is it not plain to every man? Let any gentleman who entertains doubts on this point recur to the debates in the Virginia House of Delegates in 1832, and he will see with what freedom a proposition made by Mr. Jefferson Randolph for the gradual abolition of slavery was discussed in that body. Every one spoke of slavery as he thought; very ignominious and disparaging names and epithets were applied to it. The debates in the House of Delegates on that occasion, I believe, were all published. They were read by every colored man who could read, and to those who could not read, those debates were read by others. At that time Virginia was not unwilling or afraid to discuss this question, and to let that part of her population know as much of the discussion as they could learn. That was in 1832. As has been said by the honorable member from South Carolina, these Abolition societies commenced their course of action in 1835. It is said, I do not know how true it may be, that they sent incendiary publications into the slave States; at any rate, they attempted to arouse, and did arouse,

a very strong feeling; in other words, they created great agitation in the North against Southern slavery. Well, what was the result? The bonds of the slaves were bound more firmly than before, their rivets were more strongly fastened. Public opinion, which in Virginia had begun to be exhibited against slavery, and was opening out for the discussion of the question, drew back and shut itself up in its castle. I wish to know whether any body in Virginia can now talk openly as Mr. Randolph, Governor McDowell, and others talked in 1832, and sent their remarks to the press? We all know the fact, and we all know the cause; and every thing that these agitating people have done has been, not to enlarge, but to restrain, not to set free, but to bind faster, the slave population of the South.*

Again, Sir, the violence of the Northern press is complained of. The press violent! Why, Sir, the press is violent everywhere. There are outrageous reproaches in the North against the South, and there are reproaches as vehement in the South against the North. Sir, the extremists of both parts of this country are violent; they mistake loud and violent talk for eloquence and for reason. They think that he who talks loudest reasons best. And this we must expect, when the press is free, as it is here, and I trust always will be; for, with all its licentiousness and all its evil, the entire and absolute freedom of the press is essential to the preservation of government on the basis of a free constitution. Wherever it exists there will be foolish and violent paragraphs in the newspapers, as there are, I am sorry to say, foolish and violent speeches in both houses of Congress. In truth, Sir, I must say that, in my opinion, the vernacular tongue of the country has become greatly vitiated, depraved, and corrupted by the style of our Congressional debates. And if it were possible for those debates to vitiate the principles of the people as much as they have depraved their tastes, I should cry out, "God save the Republic!"

Well, in all this I see no solid grievance, no grievance presented by the South, within the redress of the government, but the single one to which I have referred; and that is, the want of a proper regard to the injunction of the Constitution for the delivery of fugitive slaves.

* See Note at the end of the Speech.

There are also complaints of the North against the South. I need not go over them particularly. The first and gravest is, that the North adopted the Constitution, recognizing the existence of slavery in the States, and recognizing the right, to a certain extent, of the representation of slaves in Congress, under a state of sentiment and expectation which does not now exist; and that, by events, by circumstances, by the eagerness of the South to acquire territory and extend her slave population, the North finds itself, in regard to the relative influence of the South and the North, of the free States and the slave States, where it never did expect to find itself when they agreed to the compact of the Constitution. They complain, therefore, that, instead of slavery being regarded as an evil, as it was then, an evil which all hoped would be extinguished gradually, it is now regarded by the South as an institution to be cherished, and preserved, and extended; an institution which the South has already extended to the utmost of her power by the acquisition of new territory.

Well, then, passing from that, every body in the North reads; and every body reads whatsoever the newspapers contain; and the newspapers, some of them, especially those presses to which I have alluded, are careful to spread about among the people every reproachful sentiment uttered by any Southern man bearing at all against the North; every thing that is calculated to exasperate and to alienate; and there are many such things, as every body will admit, from the South, or some portion of it, which are disseminated among the reading people; and they do exasperate, and alienate, and produce a most mischievous effect upon the public mind at the North. Sir, I would not notice things of this sort appearing in obscure quarters; but one thing has occurred in this debate which struck me very forcibly. An honorable member from Louisiana addressed us the other day on this subject. I suppose there is not a more amiable and worthy gentleman in this chamber, nor a gentleman who would be more slow to give offence to any body, and he did not mean in his remarks to give offence. But what did he say? Why, Sir, he took pains to run a contrast between the slaves of the South and the laboring people of the North, giving the preference, in all points of condition, and comfort, and happiness, to the slaves of the South. The honorable member, doubtless, did

not suppose that he gave any offence, or did any injustice. He was merely expressing his opinion. But does he know how remarks of that sort will be received by the laboring people of the North? Why, who are the laboring people of the North? They are the whole North. They are the people who till their own farms with their own hands; freeholders, educated men, independent men. Let me say, Sir, that five sixths of the whole property of the North is in the hands of the laborers of the North; they cultivate their farms, they educate their children, they provide the means of independence. If they are not freeholders, they earn wages; these wages accumulate, are turned into capital, into new freeholds, and small capitalists are created. Such is the case, and such the course of things, among the industrious and frugal. And what can these people think when so respectable and worthy a gentleman as the member from Louisiana undertakes to prove that the absolute ignorance and the abject slavery of the South are more in conformity with the high purposes and destiny of immortal, rational human beings, than the educated, the independent free labor of the North?

There is a more tangible and irritating cause of grievance at the North. Free blacks are constantly employed in the vessels of the North, generally as cooks or stewards. When the vessel arrives at a Southern port, these free colored men are taken on shore, by the police or municipal authority, imprisoned, and kept in prison till the vessel is again ready to sail. This is not only irritating, but exceedingly unjustifiable and oppressive. Mr. Hoar's mission, some time ago, to South Carolina, was a well-intended effort to remove this cause of complaint. The North thinks such imprisonments illegal and unconstitutional; and as the cases occur constantly and frequently, they regard it as a great grievance.

Now, Sir, so far as any of these grievances have their foundation in matters of law, they can be redressed, and ought to be redressed; and so far as they have their foundation in matters of opinion, in sentiment, in mutual crimination and recrimination, all that we can do is to endeavor to allay the agitation, and cultivate a better feeling and more fraternal sentiments between the South and the North.

Mr. President, I should much prefer to have heard from every member on this floor declarations of opinion that this Union

prolonged lives, would rebuke and reproach us; and our children and our grandchildren would cry out shame upon us, if we of this generation should dishonor these ensigns of the power of the government and the harmony of that Union which is every day felt among us with so much joy and gratitude. What is to become of the army? What is to become of the navy? What is to become of the public lands? How is each of the thirty States to defend itself? I know, although the idea has not been stated distinctly, there is to be, or it is supposed possible that there will be, a Southern Confederacy. I do not mean, when I allude to this statement, that any one seriously contemplates such a state of things. I do not mean to say that it is true, but I have heard it suggested elsewhere, that the idea has been entertained, that, after the dissolution of this Union, a Southern Confederacy might be formed. I am sorry, Sir, that it has ever been thought of, talked of, or dreamed of, in the wildest flights of human imagination. But the idea, so far as it exists, must be of a separation, assigning the slave States to one side and the free States to the other. Sir, I may express myself too strongly, perhaps, but there are impossibilities in the natural as well as in the physical world, and I hold the idea of a separation of these States, those that are free to form one government, and those that are slave-holding to form another, as such an impossibility. We could not separate the States by any such line, if we were to draw it. We could not sit down here to-day and draw a line of separation that would satisfy any five men in the country. There are natural causes that would keep and tie us together, and there are social and domestic relations which we could not break if we would, and which we should not if we could.

Sir, nobody can look over the face of this country at the present moment, nobody can see where its population is the most dense and growing, without being ready to admit, and compelled to admit, that ere long the strength of America will be in the Valley of the Mississippi. Well, now, Sir, I beg to inquire what the wildest enthusiast has to say on the possibility of cutting that river in two, and leaving free States at its source and on its branches, and slave States down near its mouth, each forming a separate government? Pray, Sir, let me say to the people of this country, that these things are wor-

thy of their pondering and of their consideration. Here, Sir, are five millions of freemen in the free States north of the river Ohio. Can any body suppose that this population can be severed, by a line that divides them from the territory of a foreign and an alien government, down somewhere, the Lord knows where, upon the lower banks of the Mississippi? What would become of Missouri? Will she join the *arrondissement* of the slave States? Shall the man from the Yellow Stone and the Platte be connected, in the new republic, with the man who lives on the southern extremity of the Cape of Florida? Sir, I am ashamed to pursue this line of remark. I dislike it, I have an utter disgust for it. I would rather hear of natural blasts and mildews, war, pestilence, and famine, than to hear gentlemen talk of secession. To break up this great government! to dismember this glorious country! to astonish Europe with an act of folly such as Europe for two centuries has never beheld in any government or any people! No, Sir! no, Sir! There will be no secession! Gentlemen are not serious when they talk of secession.

Sir, I hear there is to be a convention held at Nashville. I am bound to believe that, if worthy gentlemen meet at Nashville in convention, their object will be to adopt conciliatory counsels; to advise the South to forbearance and moderation, and to advise the North to forbearance and moderation; and to inculcate principles of brotherly love and affection, and attachment to the Constitution of the country as it now is. I believe, if the convention meet at all, it will be for this purpose; for certainly, if they meet for any purpose hostile to the Union, they have been singularly inappropriate in their selection of a place. I remember, Sir, that, when the treaty of Amiens was concluded between France and England, a sturdy Englishman and a distinguished orator, who regarded the conditions of the peace as ignominious to England, said in the House of Commons, that, if King William could know the terms of that treaty, he would turn in his coffin! Let me commend this saying of Mr. Windham, in all its emphasis and in all its force, to any persons who shall meet at Nashville for the purpose of concerting measures for the overthrow of this Union over the bones of Andrew Jackson!

Sir, I wish now to make two remarks, and hasten to a conclu-

sion. I wish to say, in regard to Texas, that if it should be hereafter, at any time, the pleasure of the government of Texas to cede to the United States a portion, larger or smaller, of her territory which lies adjacent to New Mexico, and north of 36° 30′ of north latitude, to be formed into free States, for a fair equivalent in money or in the payment of her debt, I think it an object well worthy the consideration of Congress, and I shall be happy to concur in it myself, if I should have a connection with the government at that time.

I have one other remark to make. In my observations upon slavery as it has existed in this country, and as it now exists, I have expressed no opinion of the mode of its extinguishment or melioration. I will say, however, though I have nothing to propose, because I do not deem myself so competent as other gentlemen to take any lead on this subject, that if any gentleman from the South shall propose a scheme, to be carried on by this government upon a large scale, for the transportation of free colored people to any colony or any place in the world, I should be quite disposed to incur almost any degree of expense to accomplish that object. Nay, Sir, following an example set more than twenty years ago by a great man,* then a Senator from New York, I would return to Virginia, and through her to the whole South, the money received from the lands and territories ceded by her to this government, for any such purpose as to remove, in whole or in part, or in any way to diminish or deal beneficially with, the free colored population of the Southern States. I have said that I honor Virginia for her cession of this territory. There have been received into the treasury of the United States eighty millions of dollars, the proceeds of the sales of the public lands ceded by her. If the residue should be sold at the same rate, the whole aggregate will exceed two hundred millions of dollars. If Virginia and the South see fit to adopt any proposition to relieve themselves from the free people of color among them, or such as may be made free, they have my full consent that the government shall pay them any sum of money out of the proceeds of that cession which may be adequate to the purpose.

And now, Mr. President, I draw these observations to a

* Mr. Rufus King.

close. I have spoken freely, and I meant to do so. I have sought to make no display. I have sought to enliven the occasion by no animated discussion, nor have I attempted any train of elaborate argument. I have wished only to speak my sentiments, fully and at length, being desirous, once and for all, to let the Senate know, and to let the country know, the opinions and sentiments which I entertain on all these subjects. These opinions are not likely to be suddenly changed. If there be any future service that I can render to the country, consistently with these sentiments and opinions, I shall cheerfully render it. If there be not, I shall still be glad to have had an opportunity to disburden myself from the bottom of my heart, and to make known every political sentiment that therein exists.

And now, Mr. President, instead of speaking of the possibility or utility of secession, instead of dwelling in those caverns of darkness, instead of groping with those ideas so full of all that is horrid and horrible, let us come out into the light of day; let us enjoy the fresh air of Liberty and Union; let us cherish those hopes which belong to us; let us devote ourselves to those great objects that are fit for our consideration and our action; let us raise our conceptions to the magnitude and the importance of the duties that devolve upon us; let our comprehension be as broad as the country for which we act, our aspirations as high as its certain destiny; let us not be pigmies in a case that calls for men. Never did there devolve on any generation of men higher trusts than now devolve upon us, for the preservation of this Constitution and the harmony and peace of all who are destined to live under it. Let us make our generation one of the strongest and brightest links in that golden chain which is destined, I fondly believe, to grapple the people of all the States to this Constitution for ages to come. We have a great, popular, constitutional government, guarded by law and by judicature, and defended by the affections of the whole people. No monarchical throne presses these States together, no iron chain of military power encircles them; they live and stand under a government popular in its form, representative in its character, founded upon principles of equality, and so constructed, we hope, as to last for ever. In all its history it has been beneficent; it has trodden down no man's lib-

erty; it has crushed no State. Its daily respiration is liberty and patriotism; its yet youthful veins are full of enterprise, courage, and honorable love of glory and renown. Large before, the country has now, by recent events, become vastly larger. This republic now extends, with a vast breadth, across the whole continent. The two great seas of the world wash the one and the other shore. We realize, on a mighty scale, the beautiful description of the ornamental border of the buckler of Achilles: —

> " Now, the broad shield complete, the artist crowned
> With his last hand, and poured the ocean round;
> In living silver seemed the waves to roll,
> And beat the buckler's verge, and bound the whole.'

NOTE.

Page 90.

Letter from Mr. Webster to the Editors of the National Intelligencer, inclosing Extracts from a Letter of the late Dr. Channing.

Washington, February 15*th*, 1851.

MESSRS. GALES & SEATON: —

Having occasion recently to look over some files of letters written several years ago, I happened to fall on one from the late Rev. Dr. W. E. Channing. It contains passages which I think, coming from such a source, and written at such a time, would be interesting to the country. I have therefore extracted them, and send them to you for publication in your columns. Yours respectfully,

DANIEL WEBSTER.

Boston, May 14*th*, 1828.

MY DEAR SIR: —

I wish to call your attention to a subject of general interest.

A little while ago, Mr. Lundy of Baltimore, the editor of a paper called " The Genius of Universal Emancipation," visited this part of the country, to stir us up to the work of abolishing slavery at the South, and intention is to organize societies for this purpose. I know few ob- ato which I should enter with more zeal, but I am aware how exertions are to be made for it in this part of the country. I

know that our Southern brethren interpret every word from this region on the subject of slavery as an expression of hostility. I would ask if they cannot be brought to understand us better, and if we can do any good till we remove their misapprehensions. It seems to me that, before moving in this matter, we ought to say to them distinctly, "We consider slavery as your calamity, not your crime, and we will share with you the burden of putting an end to it. We will consent that the public lands shall be appropriated to this object; or that the general government shall be clothed with power to apply a portion of revenue to it."

I throw out these suggestions merely to illustrate my views. We must first let the Southern States see that we are their *friends* in this affair; that we sympathize with them, and, from principles of patriotism and philanthropy, are willing to share the toil and expense of abolishing slavery, or I fear our interference will avail nothing. I am the more sensitive on this subject from my increased solicitude for the preservation of the Union. I know no public interest so important as this. I ask from the general government hardly any other boon than that it will hold us together, and preserve pacific relations and intercourse among the States. I deprecate every thing which sows discord and exasperates sectional animosities. If it will simply keep us at peace, and will maintain in full power the national courts, for the purpose of settling quietly among citizens of different States questions which might otherwise be settled by arms, I shall be satisfied.

My fear in regard to our efforts against slavery is, that we shall make the case worse by rousing sectional pride and passion for its support, and that we shall only break the country into two great parties, which may shake the foundations of government.

I have written to you because your situation gives you advantages which perhaps no other man enjoys for ascertaining the method, if any can be devised, by which we may operate beneficially and safely in regard to slavery. Appeals will probably be made soon to the people here, and I wish that wise men would save us from the rashness of enthusiasts, and from the perils to which our very virtues expose us.

With great respect, your friend,

WM. E. CHANNING.

HON. DANIEL WEBSTER.

Tribute to Mr. Calhoun*

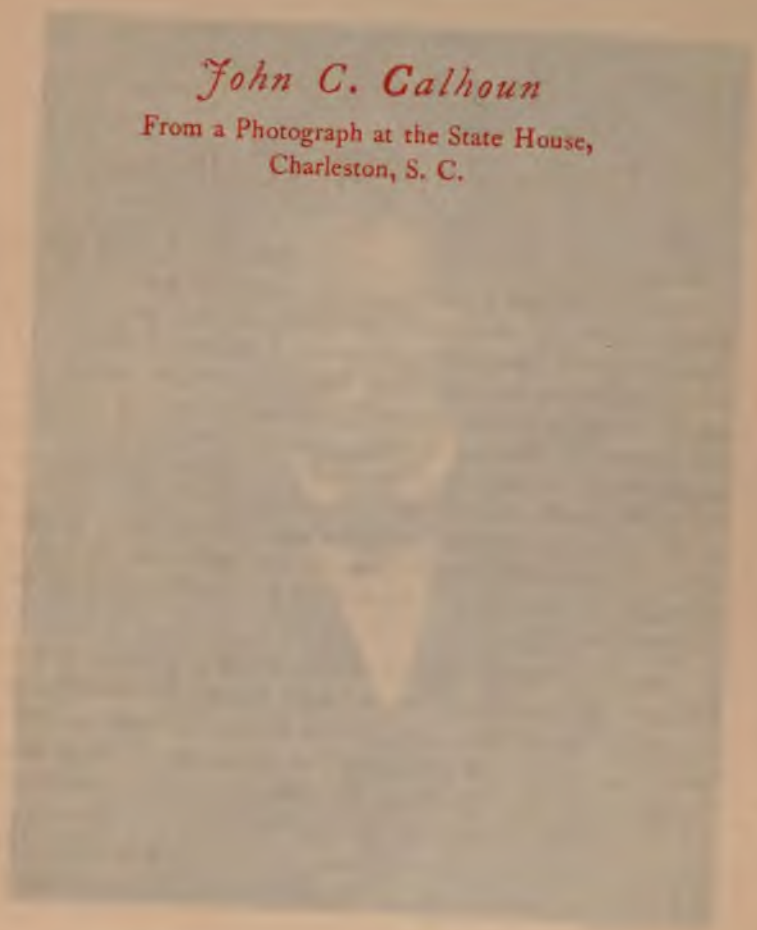
On the morning of the 31st of March, 1850, Mr. Calhoun died at his lodgings in Washington. Although his health had been for some time failing, he gave his attendance in the Senate, and took part in its deliberations, till a short time before his decease. On the 4th of March he appeared in his seat, but not feeling himself equal to the task of addressing the Senate, a speech prepared by him on the existing controversies was read by Mr. Mason of Virginia. On the 7th of March he was again present during the delivery of Mr. Webster's speech, and followed him with a few remarks relative to the acquisition of Texas. On the 13th of March he appeared in the Senate and spoke in public for the last time. On the 1st of April his lamented decease was announced by his colleague, Mr. Butler. On that occasion Mr. Webster made the following remarks.

I hope the Senate will indulge me in adding a very few words to what has been said. My apology for this presumption is the very long acquaintance which has subsisted between Mr. Calhoun and myself. We were of the same age. I made my first entrance into the House of Representatives in May, 1813. I there found Mr. Calhoun. He had already been a member of that body for two or three years. I found him then an active and efficient member of the House, taking a decided part, and exercising a decided influence, in all its deliberations.

From that day to the day of his death, amidst all the strifes of party and politics, there has subsisted between us, always, and without interruption, a great degree of personal kindness.

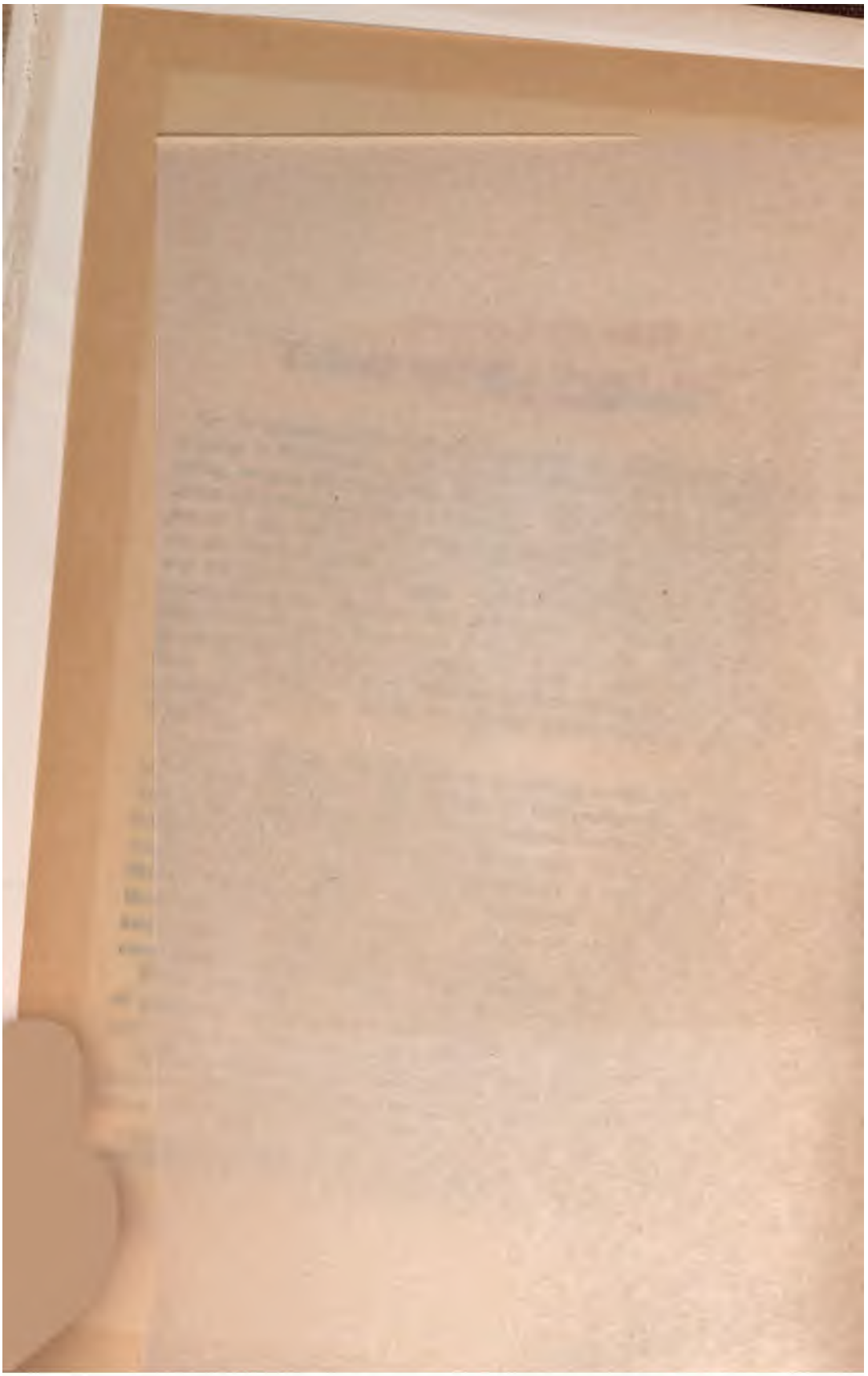
Differing widely on many great questions respecting our institutions and the government of the country, those differences never interrupted our personal and social intercourse. I have

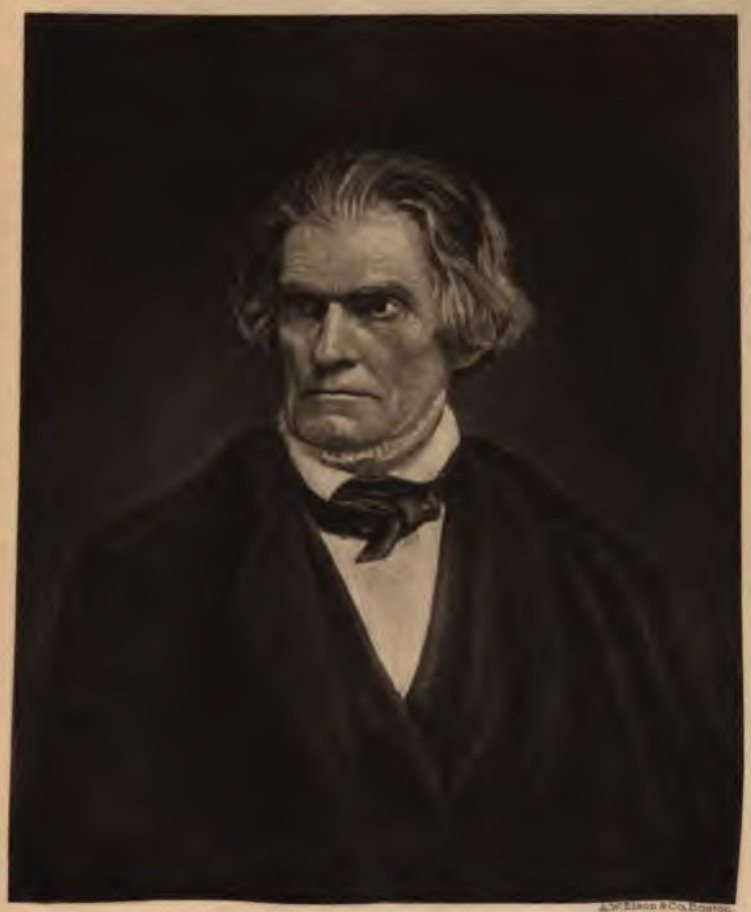
* Remarks in the Senate, on the 1st of April, 1850, on occasion of the decease of Hon. John Caldwell Calhoun, Senator from South Carolina.



John C. Calhoun

From a Photograph at the State House,
Charleston, S. C.





A.W. Elson & Co. Boston.

been present at most of the distinguished instances of the exhibition of his talents in debate. I have always heard him with pleasure, often with much instruction, not unfrequently with the highest degree of admiration.

Mr. Calhoun was calculated to be a leader in whatsoever association of political friends he was thrown. He was a man of undoubted genius and of commanding talent. All the country and all the world admit that. His mind was both perceptive and vigorous. It was clear, quick, and strong.

Sir, the eloquence of Mr. Calhoun, or the manner in which he exhibited his sentiments in public bodies, was part of his intellectual character. It grew out of the qualities of his mind. It was plain, strong, terse, condensed, concise; sometimes impassioned, still always severe. Rejecting ornament, not often seeking far for illustration, his power consisted in the plainness of his propositions, in the closeness of his logic, and in the earnestness and energy of his manner. These are the qualities, as I think, which have enabled him through such a long course of years to speak often, and yet always command attention. His demeanor as a Senator is known to us all, is appreciated, venerated, by us all. No man was more respectful to others; no man carried himself with greater decorum, no man with superior dignity. I think there is not one of us, when he last addressed us from his seat in the Senate, his form still erect, with a voice by no means indicating such a degree of physical weakness as did in fact possess him, with clear tones, and an impressive, and, I may say, an imposing manner, who did not feel that he might imagine that we saw before us a Senator of Rome, while Rome survived.

Sir, I have not, in public nor in private life, known a more assiduous person in the discharge of his appropriate duties. I have known no man who wasted less of life in what is called recreation, or employed less of it in any pursuits not connected with the immediate discharge of his duty. He seemed to have no recreation but the pleasure of conversation with his friends. Out of the chambers of Congress, he was either devoting himself to the acquisition of knowledge pertaining to the immediate subject of the duty before him, or else he was indulging in those social interviews in which he so much delighted.

My honorable friend from Kentucky * has spoken in just terms

* Mr. Clay.

of his colloquial talents. They certainly were singular and eminent. There was a charm in his conversation not often equalled. He delighted especially in conversation and intercourse with young men. I suppose that there has been no man among us, who had more winning manners, in such an intercourse and such conversation, with men comparatively young, than Mr. Calhoun. I believe one great power of his character, in general, was his conversational talent. I believe it is that, as well as a consciousness of his high integrity, and the greatest reverence for his talents and ability, that has made him so endeared an object to the people of the State to which he belonged.

Mr. President, he had the basis, the indispensable basis of all high character; and that was unspotted integrity and unimpeached honor. If he had aspirations, they were high, and honorable, and noble. There was nothing grovelling, or low, or meanly selfish, that came near the head or the heart of Mr. Calhoun. Firm in his purpose, perfectly patriotic and honest, as I am sure he was, in the principles that he espoused, and in the measures that he defended, aside from that large regard for the species of distinction that conducted him to eminent stations for the benefit of the republic, I do not believe he had a selfish motive or selfish feeling. However he may have differed from others of us in his political opinions or his political principles, those principles and those opinions will now descend to posterity under the sanction of a great name. He has lived long enough, he has done enough, and he has done it so well, so successfully, so honorably, as to connect himself for all time with the records of his country. He is now an historical character. Those of us who have known him here will find that he has left upon our minds and our hearts a strong and lasting impression of his person, his character, and his public performances, which, while we live, will never be obliterated. We shall hereafter, I am sure, indulge in it as a grateful recollection, that we have lived in his age, that we have been his contemporaries, that we have seen him, and heard him, and known him. We shall delight to speak of him to those who are rising up to fill our places. And, when the time shall come that we ourselves must go, one after another, to our graves, we shall carry with us a deep sense of his genius and character, his honor and integrity, his amiable deportment in private life, and the purity of his exalted patriotism.

Tribute to Mr. Elmore*

On the decease of Mr. Calhoun, the Hon. Franklin H. Elmore was appointed his successor by the Governor of South Carolina. On the 6th of May he took his seat in the Senate, but in an infirm state of health. On the 29th of the same month he expired. It again devolved on Mr. Butler to perform the painful duty of announcing the decease of a colleague, on which occasion the following remarks were made by Mr. Webster.

Mr. President, — I sincerely sympathize with the honorable member from South Carolina, whose painful duty it has been, within so short a period, to announce the death of another colleague. I sympathize, Sir, with all the people of South Carolina, by whom, as I know, the gentleman now deceased was greatly respected and loved. I sympathize with that domestic circle to whom his death will be a loss never to be repaired. And, Sir, I feel that the Senate may well be the object of condolence on the death of a gentleman so well known in the other branch of the legislature, of so much experience in the various duties of public and official life in his own State, and who has so recently come into this body with every qualification to render here important public service, and with every prospect of usefulness, except so far as that prospect may have been dimmed by serious apprehensions in regard to his health.

Sir, I had the good fortune to become acquainted with Mr. Elmore ten or twelve years ago, when he was a member, and I may say a leading member, of the House of Representatives. I had formed a very favorable opinion of his character, as a

* Remarks in the Senate of the United States, on the 30th of May, 1850, on occasion of the decease of Hon. Franklin Harper Elmore.

man of integrity and uprightness, of great respectability, and great talent. I regretted his departure from the councils of the nation, because a person with his qualifications and with his habits of business grows every day more useful in our political circles, so long as he remains in the possession of his faculties and in the active performance of his duties. It happened to me, Sir, some years afterwards, and not now many years since, to form a personal and more private acquaintance with the deceased. I had the pleasure of seeing him among his own friends, of cultivating his acquaintance in the midst of those circles of social life in which he was regarded as a treasure and an ornament. I owe, Sir, to him whatever is due for kindness and hospitality, for generous welcome, and for an extension of the civilities and courtesies of life.

I shall cherish his memory with sincere regard as a valuable and able public man, and a gentleman entitled to high estimation in all the relations of life.

Fugitive Slave Bill*

MR. PRESIDENT, — At an early period of the session I turned my attention to the subject of preparing a bill respecting the reclamation of fugitive slaves, or of certain amendments to the existing law on that subject. In pursuance of this purpose, I conferred with some of the most eminent members of the profession, and especially with a high judicial authority, who has had more to do with questions of this kind, I presume, than any other judge in the United States. After these consultations and conferences, as early as in February, I prepared a bill amendatory of the act of 1793, intending, when a proper time came, to lay it before the Senate for its consideration. I now wish to present the bill to the Senate unaltered, and precisely as it was when prepared in February last.

MR. DAYTON. I hope that the paper will be printed.

The bill was then laid on the table and ordered to be printed, as follows: —

A BILL amendatory of "An Act respecting Fugitives from Justice and Persons escaping from the Service of their Masters," approved February 12, 1793.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the said act shall extend to the territories of the United States; and that the commissioners who now are, or who may hereafter be, appointed by the Circuit Courts of the United States, or the District Courts where Cir-

* Remarks made on the 3d of June, 1850, in presenting to the Senate "A Bill amendatory of 'An Act respecting Fugitives from Justice and Persons escaping from the Service of their Masters,'" approved February 12, 1793.

cuit Courts are not established, or by the Territorial courts of the United States, all of which courts are authorized and required to appoint one or more commissioners in each county to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, and who shall each, or any judge of the United States, on complaint being made on oath to him that a fugitive from labor is believed to be within the State or Territory in which he lives, issue his warrant to the marshal of the United States, or to any other person who shall be willing to serve it, authorizing an arrest of the fugitive, if within the State or Territory, to be brought before him or some other commissioner or judge of the United States court within the State or Territory, that the right of the person claiming the services of such fugitive may be examined. And on the hearing, depositions duly authenticated and parol proof shall be heard to establish the identity of the fugitive and the right of the claimant, and also to show that slavery is established in the State from which the fugitive absconded. And if on such hearing the commissioner or judge shall find the claim to the services of the fugitive, as asserted, sustained by the evidence, he shall make out a certificate of the material facts proved, and of his judgment thereon, which he shall sign, and which shall be conclusive of the right of the claimant or his agent to take the fugitive back to the State from whence he fled. *Provided*, that if the fugitive shall deny that he owes service to the claimant under the laws of the State where he was held, and, after being duly cautioned as to the solemnities and consequences of an oath, shall swear to the same, the commissioner or judge shall forthwith summon a jury of twelve men to try the right of the claimant, who shall be sworn to try the cause according to evidence, and the commissioner or judge shall preside at the trial, and determine the competency of the proof.

Sec. 2. *And be it further enacted*, That the commissioner shall receive ten dollars in each case tried by him as aforesaid, the jurors fifty cents each, and the marshal or other person serving the process shall receive five dollars for serving the warrant on each fugitive, and for mileage and other services the same as are allowed to the marshal for similar services, to be examined and allowed by the commissioner or judge, and paid by the claimant.

The Boundaries of Texas*

WHILE the debate was in progress in the Senate of the United States, upon the resolutions of Mr. Clay, a motion was made by Mr. Foote of Mississippi, for a committee of thirteen, to consider and report a comprehensive plan of adjustment of all the matters in controversy on the subject of slavery. This motion prevailed, and a committee was appointed by ballot, composed of the following persons: Messrs. Clay, Bell, Berrien, Bright, Cass, Cooper, Dickinson, Downs, King, Mangum, Mason, Phelps, and Webster. This committee, on the 8th of May, reported by their chairman (Mr. Clay) a bill, the principal provisions of which were the admission of California with the existing boundaries, the establishment of territorial governments for Utah and New Mexico without the Wilmot Proviso, the settlement of the boundary controversy between New Mexico and Texas, the surrender of fugitive slaves, and the prohibition of the slave trade in the District of Columbia.

While this bill was under consideration, a motion was made by Mr. Turney of Tennessee to strike out the thirty-ninth section, which contained a proposal, to be offered to the acceptance of the people of Texas, for the settlement of their boundary controversy with New Mexico. On this motion Mr. Webster spoke as follows: —

I WISH to make a few remarks upon this question, considering it a very important one, under all the aspects in which it is presented. This bill contains three leading subjects, the admission of California into the Union, the establishment of territorial governments for New Mexico and Utah, and the settlement of the boundary line between the United States or New Mexico and the State of Texas. I am in favor of each and every one of these subjects, and should be inclined to vote for them,

* Remarks in the Senate of the United States, on the 13th of June, 1850, on a Motion to strike out the thirty-ninth section of "The Compromise Bill," being the section relative to the Boundaries of Texas.

separately or together, as may best suit the convenience or the general judgment of the Senate, my own opinion having been well known from the beginning to be, that it would have been wiser to proceed with California as a separate measure. Here is now before us a bill providing for the three objects. That provision which relates to the establishment of the boundary between the territory of the United States and Texas is under immediate consideration, and the section embracing that part of the bill is now open to amendment. The present motion is, however, to strike out from the bill the whole section; that is, all that respects the United States and Texas.

Now, Sir, it appears to me that we shall have no question more important than this in the course of our deliberations in the Senate. It seems to me that it is one of the most material points connected with this subject, which gives us all so much general anxiety, the disposition of our territories newly acquired from Mexico.

Mr. President, there are different views entertained with respect to the manner in which these territories should be treated, whether a provision should now be made for establishing in New Mexico and Utah territorial governments in the common form, or whether, California being admitted, these territories should not be left for future consideration. I am most anxious, Sir, to take that course in this respect which shall be most conformable to our common practice heretofore, the most suitable to the occasion, and the most likely to produce a speedy settlement of all the various questions.

Now, Sir, before any territorial government can be established for New Mexico, it is clearly necessary that the boundary of New Mexico should be ascertained, or else defined by a provision simultaneous with that which establishes the government. But that is not all. There is evidently something in this case which goes much further. Some gentlemen are of opinion that the Territory of New Mexico should remain as she is until she is prepared to come in as a State. Well, Sir, it strikes me as highly improbable, if not impossible, that she ever can come in as a State, until we define her boundaries and know what really constitutes New Mexico. If we leave her as she is, how is it to be known who her people are? Who are to get together to form her constitution and apply for admission as a State? What is New Mexico? How is she limited and bounded?

Now I understand it to be admitted by gentlemen here, while Texas claims all the country east of the Rio del Norte up to the forty-second degree of north latitude, and while this claim of hers is not admitted, that she has some title or right, or some claim or plausible pretence of title or right, to a portion of the country between the Nueces and the Rio Grande. What portion, and how far to the north does that pretence or claim of right extend? How far above the common track which leads from Austin into Mexico, along the Presidio road? Where are its true limits? This is quite unsettled, and Texas, in the mean time, claims all along the line, not only up to El Paso del Norte, but still further, on to Santa Fé and Taos, and so to the forty-second degree of north latitude, embracing all that lies to the eastward of the Rio del Norte. If that be so, Sir, every body sees that it takes away a great portion of what has usually been considered as New Mexico. The fact is stated to be, and I suppose truly, that Texas has organized her civil government, not only up to El Paso del Norte, but beyond that, and has established civil jurisdiction some sixty or eighty miles above the Paso del Norte, claiming the whole of that country, with the right to establish her civil jurisdiction over the whole of it, just so soon as her own convenience requires it.

Now, I submit it to every one, what will be the state of things in New Mexico if these matters be not immediately adjusted? I should suppose all must see that things cannot remain as they are long, without some interposition by Congress. It is to be remembered that this territory is becoming Texas territory, in point of fact, every day. I understand an honorable member from Texas to say, that, in that part of the country which lies above the line contemplated by the committee, there are many voters who have actually attached themselves to the Texan government; that several hundred votes were cast last year, as in the exercise of municipal and political rights under the jurisdiction of Texas, by persons, many of whom live as far as seventy or eighty miles above the Paso del Norte, and others a little below.

Texas is a State with a regular constitution, a regular executive and legislative and judicial authority, and it is proposed now to leave New Mexico without any government to resist or contest the claims of Texas. How can that be considered a

wise and practical mode of settling the question? The power is all on one side. There is now no authority, executive, legislative, or judicial, that can unitedly call itself the government of New Mexico. There are alcaldes, I suppose, in the cities and towns; but where is the political government, the head, the leading authority of New Mexico? Where is there any thing in New Mexico that can say that it represents the territory? There is nothing upon earth that can do so, nothing anywhere that can remonstrate against Texas. There is nothing that can assert its own rights against Texas. Who is there even that can memorialize Congress? There is nobody but individuals, and those individuals very much disposed, according to recent appearances, at least some of them, to attach themselves to Texas, perhaps from a sort of necessity of having some government. Now, Sir, under this aspect of the case, the time seems to me to be far distant when New Mexico will be able to present herself here as a State, proper to be admitted into this Union. Our young and amiable sister, Texas, is, even by her best friends, admitted to be in love with land. She seeks land, and the immensity of her territory as it is does not satisfy her appetite in that respect.

Sir, with respect to all that country that lies beyond the outer settlements of Texas, beyond San Antonio de Bexar, and thence stretching out to the Paso del Norte in a southwestern direction, I presume it is of little importance to whom it belongs, because I do not suppose that there is a more desert, arid section of country on the continent. The honorable Senator from Missouri* made out a pretty good case for what he called the bucolic region of New Mexico, that is, the banks of the Puerco, and, according to him, there were formerly a great number of sheep depastured along the banks of that river. If so, Sir, that was the exception to the general rule. I suppose that no one doubts that, in the whole country from the Nueces to the Rio Grande, and thence along north between the mountains of Guadalupe, and so also beyond the mountains, the land is of but little value to any body. I take it to be true, as was said by my friend from North Carolina† the other day, that the great want of the country is the want of water. It is true, also, that there is almost a total want of tim-

* Mr. Benton. † Mr. Mangum.

ber, although it is possible in that climate to get on somewhat better without fuel than without water. The expedition that went through there last year found many parts in which there is not a drop of water, sometimes for twenty miles, sometimes for thirty miles, sometimes for forty miles, and sometimes for seventy miles. That there are some few spots more favored is true; but it is certain that, throughout that whole region, there is one fatal want of water; and I understand that, even above the Paso del Norte, on the route to Santa Fé and Taos, there are long stretches where the traveller, be he Indian or be he white man, is driven away from the river by the near approach of the mountains, and is obliged to take his course along the plains; and that in one instance there is a distance of ninety miles to be traversed over these plains, in which he does not find a drop of water. Above this, I believe, the land and the climate are somewhat better.

Now I think that it will require all the population that we can secure to New Mexico to make her hereafter either a respectable Territory or a respectable State; and my opinion is, therefore, that this is of the utmost importance; and, to speak out plainly at once, I think this amendment places almost the whole of New Mexico entirely at the sovereign will and pleasure of Texas. I wish to rescue it from the grasp of Texas. I wish to preserve all of it, so that it may hereafter constitute a respectable political community. And I put it to gentlemen, whether they wish this bill to be passed or not; and, even if they have made up their minds to go against it, to say on their consciences whether it is not better to retain this provision in the bill, for the purpose of keeping New Mexico out of the hands of Texas? That is the precise question presented here to-day, and I think the country must take that view of it. What can New Mexico do against Texas, let her right be ever so good? I entertain a strong opinion, though not a decisive one; I am at least strongly inclined to the opinion that her right is good. But then what is right against might? And if this government neglects her, if she will not define her boundaries, and will not say what New Mexico has or what she is, but leaves that to be decided at some indefinite time hereafter, New Mexico will be pretty likely to disappear from the face of the country, — will become Texas. Texas will swallow her up.

Now I fully believe that this could be made a matter of judicial control and decision. Others, whose opinions are entitled to as much respect as mine, gentlemen connected with the government, think otherwise; and therefore, while they think otherwise, that mode of settlement will never be resorted to. The executive government, probably, would not institute a suit without the recommendation of Congress, which could hardly be obtained without much opposition. Certainly it would not be obtained soon; and if a suit were instituted, nobody can tell exactly when it would be terminated. In the mean time there is no reason to suppose that the executive government will take the responsibility of saying what the line between New Mexico and Texas legally is, and of maintaining that line by military force.

Such being the case, I will say that, as a point of practicable wisdom, it is every way just and expedient for Congress now, this day, to decide what are and what shall be the boundaries of New Mexico. For one, I wish that this line had been fixed at the north passage. Such was not the opinion of the committee; and such, as it appears, is not the opinion of the Senate; and, as the line now stands, it goes twenty miles to the north of that passage. Well, I had rather take that a great deal than to leave the whole matter unsettled; and therefore I repeat, that I wish most earnestly to call the attention of gentlemen who may not be in favor of the bill to the question, whether, if the bill is to be passed, it be not in the highest degree important now, in this bill, to settle the question of the boundary of New Mexico.

The Compromise Bill*

On the 3d of June, an amendment to the "Compromise Bill" was offered by Mr. Soulé, one of the Senators from Louisiana, which was substantially a substitute for some of its most important provisions. While this amendment was before the Senate, Mr. Webster made the following remarks, in vindication of some positions taken in his speech of the 7th of March.

On the 7th of March, Sir, I declared my opinion to be, that there is not a square rod of territory belonging to the United States, the character of which, for slavery or no slavery, is not already fixed by some irrepealable law. I remain of that opinion. This opinion, Sir, has been a good deal canvassed in the country, and it has been the subject of complaints, sometimes respectful and decorous, and sometimes so loud and so empty as to become mere clamor. But I have seen no argument upon any question of law embraced in that opinion which shakes the firmness with which I hold it, or which leads me to doubt the accuracy of my conclusions as to that part of the opinion which regarded the true construction, or, I might with more propriety say, almost the literal meaning, of the resolutions by which Texas was admitted into the Union. I have heard no argument calculated in the slightest degree to alter that opinion. The committee, I believe, with one accord, concurred in it. A great deal of surprise, real or affected, has been expressed in the country at the announcement by me of that opinion, as if there were something new in it. Yet there need have been no surprise, for there was nothing new in it.

* Remarks made in the Senate of the United States, on the 17th of June, 1850.

Other gentlemen have expressed the same opinion more than once; and I myself, in a speech made here on the 23d of March, 1848, expressed the same opinion, almost in the same words; with which nobody here found any fault, at which nobody here cavilled or made question, and nobody in the country.

With respect to the other ground on which my opinion is founded, that is, the high improbability, in point of fact, that African slavery could be introduced and established in any of the territories acquired by us in pursuance of the late treaty with Mexico, I have learned nothing, heard nothing, from that day to this, which has not entirely confirmed that opinion. That being my judgment on this matter, I voted very readily and cheerfully to omit what is called the Wilmot Proviso from these territorial bills, or to keep it out, rather, when a motion was made to introduce it. I did so upon a very full and deep conviction, that no act of Congress, no provision of law, was necessary, in any degree, for that purpose; that there were natural and sufficient reasons and causes excluding for ever African slavery from those regions. That was my judgment, and I acted on it; and it is my judgment still. Those who think differently will, of course, pursue a different line of conduct, in accordance with their own judgments. That was my opinion then, and it has been strengthened by every thing that I have learned since; and I have no more apprehension to-day of the introduction or establishment of African slavery in these territories, than I have of its introduction into and establishment in Massachusetts.

Well, Sir, I have voted not to place in these territorial bills what is called the Wilmot Proviso, and by that vote have signified a disposition to exclude the prohibition, as a thing unnecessary. I am now called upon to vote upon this amendment, moved by the honorable member from Louisiana,* which provides that the States formed out of New Mexico and Utah shall have the right and privilege of making their own constitutions, and of presenting those constitutions to Congress conformably to the Constitution of the United States, with or without a prohibition against slavery, as the people of those Territories, when about to become States, may see fit.

* Mr. Soulé.

I do not see much practical utility in this amendment, I agree. Nevertheless, if I should vote, now that it is presented to me, against it, it might leave me open to the suspicion of intending or wishing to see that accomplished in another way hereafter which I did not choose to see accomplished by the introduction of the Wilmot Proviso. That is to say, it might seem as if, voting against that form of exclusion or prohibition, I might be willing still that there should be a chance hereafter to enforce it in some other way. Now I think that ingenuousness and steadiness of purpose, under these circumstances, compel me to vote for the amendment, and I shall vote for it. I do it exactly on the same grounds that I voted against the introduction of the proviso. And let it be remembered that I am now speaking of New Mexico and Utah, and other territories acquired from Mexico, and of nothing else. I confine myself to these; and as to them, I say that I see no occasion to make a provision against slavery now, or to reserve to ourselves the right of making such provision hereafter. All this rests on the most thorough conviction, that, under the law of nature, there never can be slavery in these territories. This is the foundation of all. And I voted against the proviso, and I vote now in favor of this amendment, for the reason that all restrictions are unnecessary, absolutely unnecessary; and as such restrictions give offence, and create a kind of resentment, as they create a degree of dissatisfaction, and as I desire to avoid all dissatisfaction, as far as I can, by avoiding all measures that cause it, and which are in my judgment wholly unnecessary, I shall vote now as I voted on a former occasion, and shall support the amendment offered by the honorable member from Louisiana. I repeat again, I do it upon the exact grounds upon which I declared, upon the 7th day of March, that I should resist the Wilmot Proviso.

Sir, it does not seem to strike other Senators as it strikes me, but if there be any qualification to that general remark which I made, or the opinion which I expressed on the 7th of March, that every foot of territory of the United States has a fixed character for slavery or no slavery; if there be any qualification to that remark, it has arisen here, from what seems to be an indisposition to define the boundaries of New Mexico; that is all the danger there is. All that is part of Texas was, by

the resolutions of 1845, thrown under the general condition of the Texan territory; and let me say to gentlemen, that if, for want of defining the boundaries of New Mexico, by any proceeding or process hereafter, or by any event hereafter, any portion which they or I do not believe to be Texas should be considered to become Texas, then, so far, that qualification of my remark is applicable. And therefore I do feel, as I had occasion to say two or three days ago, that it is of the utmost importance to pass this bill, to the end that there may be a definite boundary fixed now, and fixed for ever, between the territory of New Mexico and Texas, or the limits of New Mexico and the limits of Texas. Here the question lies. If gentlemen wish to act efficiently for their own purposes, here it is, in my poor judgment, that they are called upon to act. And the thing to be done, and done at once, is to fix the boundaries of New Mexico.

Mr. President, when I see gentlemen from my own part of the country, no doubt from motives of the highest character and for most conscientious purposes, not concurring in any of these great questions with myself, I am aware that I am taking on myself an uncommon degree of responsibility. The fact, that gentlemen with whom I have been accustomed to act in the Senate took a different view of their own duties in the same case, naturally led me to reconsider my own course, to reëxamine my own opinions, to rejudge my own judgment. And now, Sir, that I have gone through this process, without prejudice, as I hope, and certainly I have done so under the greatest feeling of regret at being called upon by a sense of duty to take a step which may dissatisfy some to whom I should always be desirous of rendering my public course and every event and action of my public life acceptable, yet I cannot part from my own settled opinions. I leave consequences to themselves. It is a great emergency, a great exigency, that this country is placed in. I shall endeavor to preserve a proper regard to my own consistency. And here let me say, that neither here nor elsewhere has any thing been advanced to show that on this subject I have said or done any thing inconsistent, in the slightest degree, with any speech, or sentiment, or letter, or declaration that I ever delivered in my life; and all would be convinced of this if men would stop to consider and

look at real differences and distinctions. But where all is general denunciation, where all is clamor, where all is idle and empty declamation, where there is no search after truth, no honest disposition to inquire whether one opinion is different from the other, why, every body, in that way of proceeding, may be proclaimed to be inconsistent.

Now, Sir, I do not take the trouble to answer things of this sort that appear in the public press. I know it would be useless. Those who are of an unfriendly disposition would not publish my explanations or distinctions if I were to make them. But, Sir, if any gentleman here has any thing to say on this subject, though I throw out no challenge, yet if any gentleman here chooses to undertake the task, and many there possibly are who think it an easy task, to show in what respect any thing that I said in the debate here on the 7th of March, or any thing contained in my letter to the gentlemen of Newburyport, is inconsistent with any recorded opinion of mine since the question of the annexation of Texas arose, in 1837, I will certainly answer him with great respect and courtesy, and shall be content to stand or fall by the judgment of the country.

Sir, my object is peace. My object is reconciliation. My purpose is, not to make up a case for the North, or to make up a case for the South. My object is not to continue useless and irritating controversies. I am against agitators, North and South. I am against local ideas, North and South, and against all narrow and local contests. I am an American, and I know no locality in America; that is my country. My heart, my sentiments, my judgment, demand of me that I shall pursue such a course as shall promote the good, and the harmony, and the union of the whole country. This I shall do, God willing, to the end of the chapter.

California Public Lands and Boundaries*

MR. PRESIDENT, the amendment of the honorable member from Louisiana† respects that part of the present bill which proposes the immediate admission of California into the Union as a State; and the amendment is opposed to that immediate admission. It proposes, on the contrary, that the subject shall be referred back to the people of California; that certain conditions and modifications in the constitution of California shall be proposed to them, and that, if the people of California in convention shall accede to such conditions and modifications, then the President of the United States shall issue his proclamation announcing that fact, and thereupon California shall be admitted into the Union as a State.

The question, therefore, is, whether, upon the whole, it would be more advisable, under all the circumstances of the case, to admit California now, or to send her constitution back again, and postpone to some future and indefinite period her admission into the Union? In my opinion, Sir, it is highly expedient to admit California now. In my opinion, it is highly expedient to give her now a proper position in the Union, and to give her such powers as shall enable her to revolve among the other orbs of our system; and I really believe that that is the settled judgment of a great majority of the people of this country. If there be any question growing out of these territorial acquisitions on which there seems to be a general, I will not say a unanimous, public opinion, it is that, under the circumstances, it

* Remarks in the Senate on the 27th of June, 1850, the Amendment moved by Mr. Soulé being under consideration.

† Mr. Soulé.

is expedient and proper to admit California into the Union without further delay. She presents herself here with a sufficient population. She presents a constitution to which, in a general aspect, as a republican constitution, we can make no objection. The case is urgent and pressing. No new State has ever appeared asking for admission into the Union under circumstances so extraordinary and so striking; nor have the oldest of us seen a case presented of so peculiar a character. There is in the history of mankind, within my knowledge, no instance of such an extraordinary rush of people for private enterprise to one point on the earth's surface. It has been represented heretofore, that there are one hundred and fifty thousand people in California.* It would seem that on this very day there are fifty or sixty thousand persons traversing the great plains between Missouri and the Rocky Mountains, all bound to California. Other thousands are passing round Cape Horn; other thousands again crowd, press, fill up, and more than fill up, every conveyance that will take them to and from the Isthmus. So that it may be said, and truly said, that this very year will add a hundred thousand persons to the population of California. It is the most striking occurrence within our generation, or any generation, as far as respects any private enterprise, and the extraordinary rush of people to a given point upon the earth's surface. The capital of the Territory is supposed to contain thirty or forty thousand people; twelve hundred vessels have already been sent thither; three hundred and fifty or four hundred ships have been found riding in the harbor of San Francisco at the same time. In addition to the gold and all its other internal resources, California looks out upon India, and China, and Polynesia to the west, as we look out upon Europe to the east.

Now the question is, What is to be done with California? Sir, five years ago it happened to me to say, in a public discussion, that perhaps the time was not far distant when there would be established beyond the Rocky Mountains, and on the shore of the Western sea, a great Pacific republic, of which San Francisco would be the capital. I am overwhelmed by the appearance of the possible fulfilment of that prophecy so sud-

* This estimate proved, when the census was taken, to be considerably in excess.

denly. And, Sir, *that is the alternative, in my judgment.* I do not think it safe longer to delay the bringing of California into this Union, unless gentlemen are willing to contemplate the other part of that alternative. Other gentlemen have as good means of information of the state of opinion in California as I have; perhaps better. My information is such, at any rate, that I do not think it safe, if we intend to bring her into the Union at all, to defer that measure to another session of Congress, or to any time beyond that which is absolutely necessary for the despatch of the business of her admission. Then, I suppose, such being the general sentiment of the country, that it would also be the general sentiment of this and the other house of Congress; that is, that it is expedient, if there are no insurmountable obstacles, to bring California into the Union at once; and I do not understand the intention of the author of this amendment otherwise than that, if it were not for objections which he has propounded to the Senate, he should be willing to admit California at once. Now the question is, whether those objections are insurmountable or not? If they are, California must be kept out of the Union, let the consequences be what they may. But if they are not insurmountable, then I think, though things may exist which we might wish had been otherwise, it is a case of so much exigency and emergency, that we ought to admit California.

Let us come, then, at once to that point, and see what these objections are which have been suggested by the honorable member from Louisiana. They divide themselves into two classes. He says, in the first place, that, under the constitution of California, and by the bill unamended, there is no sufficient security that the United States will possess, enjoy, control, or have the right to dispose of the public domain or unappropriated lands in California. That is the first objection. The second relates to the boundaries of California, which he says are extravagantly large, in the first place; in the second place, unnatural; and in the third, impolitic and unfit to be made. Now, Sir, he proposes to remedy what he considers the first great deficiency of the bill, by sending back this constitution to California, and obtaining from a convention of that State an agreement, or compact, to the effect that the State of California shall never interfere with the public lands within the State, or with the pri-

mary disposal of them; nor shall ever tax them while held by the United States; nor shall tax non-resident proprietors higher than resident proprietors of the lands in that State shall be taxed. These are provisions which are, all of them, in this bill; but then the honorable member's argument is, that, as they are conditions which, from the nature of the case, can never receive the assent of the people of the State of California, because they can never be presented to them unless the constitution is sent back, they are void, and that the assent or consent of California to those conditions is necessary to make them valid and binding. His argument proceeds upon this idea: that, without some such stipulation or compact on the part of the State, the erection of a territory into a State, a political, and, in some respects, sovereign community, does necessarily establish in that sovereign community a control over the public domain; that when California becomes a State, *ipso facto* she will hold, possess, enjoy, and control the public lands; and this result he derives from an argument founded upon the nature of the sovereignty; because, he says, it is the essence of sovereign power to control the public domain.

Sir, we mislead ourselves often by using terms without sufficient accuracy, or terms not customarily found in the Constitution and laws. That the States are sovereign in many respects nobody doubts; that they are sovereign in all respects nobody contends. The term "sovereign" or "sovereignty" does not occur in the Constitution of the United States. The Constitution does not speak of the States as "sovereign States." It does not speak of this government as a "sovereign government." It avoids studiously the application of terms that might admit of different views, and the true idea of the Constitution of the United States, and also of the constitution of every State in the Union, is, that powers are conferred on the legislature, not by general, vague description, but by enumeration. The government of the United States holds no powers which it does not hold as powers enumerated in the Constitution, or as powers necessarily implied; and the same may be said of every State in the Union. The constitution of each State prescribes definitely the powers that shall belong to the government of the State. But if this were a true source of argument in this case, the honorable member would find that this implication arising

from sovereignty would just as naturally adhere to the government of the United States as to that of the States. Certainly, many higher branches of sovereignty are in the government of the United States. The United States government makes war, raises armies, maintains navies, enters into alliances, makes treaties, and coins money; none of which acts of sovereignty are performed by a State government. Nevertheless, there are sovereign powers which the State governments do perform. They punish crimes, impose penalties, regulate the tenure of land, and exercise a municipal sovereignty over it.

Let me remark that this question is not new here. I found it in the Senate the first session that I took my seat here. There is a class of notions which run in a sort of periodical orbit. They come back upon us once in fifteen or twenty years. The idea that the sovereignty of a State necessarily carries with it the ownership of the public lands within its limits was rife here twenty years ago. It was discussed, considered, debated, exploded. It went off, and here it is back again, with exactly the same aspect that attended it then.

Sir, in the year 1828 or 1829, in 1828 I think it was, the legislature of Indiana took up this subject, passed these resolutions, and instructed her members of Congress to support them: —

"*Resolved*, That this State, being a sovereign, free, and independent State, has the exclusive right to the soil and eminent domain of all the unappropriated lands within her acknowledged boundaries; which right was reserved for her by the State of Virginia, in the deed of cession of the Northwestern Territory to the United States, being confirmed and established by the Articles of Confederacy and the Constitution of the United States.

"That our Senators in Congress be instructed, and our Representatives requested, to use every exertion in their power, by reason and argument, to induce the United States to acknowledge this vested right of the State, and to place her upon an equal footing with the original States in every respect whatsoever, as well in fact as in name."

One of the gentlemen (Mr. Hendricks) who represented Indiana at that time in the Senate, and who has recently deceased, performed the duty imposed on him by the instructions of the legislature, and brought forward a section, as an amendment to one of the graduation bills introduced by the honorable mem-

ber from Missouri,* to that effect. In moving his amendment, Mr. Hendricks said: —

"It had become his duty to present to the Senate resolutions of the General Assembly of the State of Indiana, on the subject of the public lands within the limits of that State. These resolutions, said he, are similar in character to those of the State of Louisiana, a few days ago presented by a Senator from that State. They are also, in some degree, similar to the spirit of a memorial of the State of Illinois, recently presented to the Senate by a Senator from that State. In these resolutions, the legislature of Indiana has solemnly declared that the State, being sovereign, free, and independent, has the exclusive right to the soil and eminent domain of all the unappropriated lands within her acknowledged boundaries, and that this right was reserved to her by the State of Virginia in the deed of cession of the Northwestern Territory to the United States; grounds which, if tenable, as I verily believe they are, strongly appeal to the justice and to the pride of the Senators and Representatives of that magnanimous State."

"It is believed that the compact not to interfere with the primary disposal of the soil, and not to tax the lands for a specified period, cannot confer power on the federal government to hold the soil of that State for any other purposes than those pointed out by the Constitution, even if that compact had emanated from authority unquestionably competent to make it, and had been based on policy as unquestionable. There is no disposition to interfere with this compact as long as it has the form of existence in the statute-book. But its validity is questioned, having been made by the people of the Territory before the State was admitted into the Union; and its irrevocable character, as well as the perpetual obligation which it attempts to impose on the people of the State, is believed to be a dereliction from a fundamental principle of our institutions, which asserts the right of every free people to change their constitutions and laws, from time to time, as their wisdom and experience may direct. Nor does it seem to strengthen the pretension of right, to assert that the general government may hold the soil of the State as an individual may hold it; for it is by no means in that character she does hold. She holds as a sovereign, and subjects the soil of the State to the uncontrollable action of her legislative power."

Proceeding upon the ground that the public lands are the property of the State, he proposed to acknowledge that fact by this section in the graduation bill then before the Senate: —

"Sec. 6: *And be it further enacted*, That the public and unappropri-

* Mr. Benton.

ated lands within the limits of the new States shall be, and the same are hereby, ceded and relinquished in full property to the several States in which the same may be, on condition that such State shall not, at any time hereafter, put such lands into market at a lower minimum price than shall be established by law for the sale of public lands in the territories; and on condition that the Indian title to lands within the limits of any State shall hereafter be extinguished at the expense of such State."

On that occasion, Sir, the Senate was addressed much at length in support of the same proposition by a gentleman now holding an eminent station on the bench of the national judiciary,* who was then a member of Congress from Alabama. He maintained the same general idea. He said:—

"I have long entertained the opinion, that the United States cannot hold land in any State of the Union, except for the purposes enumerated in the Constitution; and whatever right they had to the soil while the country remained under territorial governments passed to the States formed over the same territory, on their admission into the Union on an equal footing with the old States."

The honorable member from Louisiana was only following these precedents. The argument of his able and learned speech was founded on the same general idea. Both gentlemen on that occasion, with the honorable member from Louisiana on this, rest their argument on the same supposed maxim of national law, or public law. On that occasion the gentlemen quoted from Vattel exactly what the member from Louisiana quotes now:—

"The general domain of the nation over the lands it inhabits is naturally connected with the empire, for, establishing itself in a vacant country, the nation certainly did not pretend to have the least dependence there on any other power. And how should an independent nation avoid having authority at home? How should it govern itself at its pleasure in the country it inhabits, if it cannot truly and absolutely dispose of it? And how should it have the full and absolute domain of the place in which it has no command? Another's sovereignty, and the right it comprehends, must take away its freedom of disposal."

Nothing is more just than that doctrine of Vattel properly

* Mr. Justice McKinley.

understood. If a nation establishes itself in a country existing *without an ownership*, why, then the vacant lands become its own. But if a number of persons, occupying land that is owned by, or living in a country that is under, another government, establish a political community, it follows of course that by no act of theirs can they divest the original ownership. The United States own this territory. The land is theirs, theirs by acquisition. It belongs to the government of the United States and the people of the United States. Now, if people owning those parts of the country appropriated heretofore to individual uses by the king of Spain, or if people resident there without title, establish a political community, by what process can it be made out that they become entitled to the whole country? The doctrine of Vattel, as I have shown, is only applicable to a case where a nation enters into a country *vacant of ownership;* and if the gentleman whose words I have read had been kind enough to read the whole of the authority from which he quoted, he would have found, I think, exactly the proper distinction. But he left off in the middle of a paragraph from Vattel's work. It goes on thus: —

"The general domain of the nation over the lands she inhabits is naturally connected with the empire; for, in establishing herself in a vacant country, the nation certainly does not intend to possess it in subjection to any other power. And can we suppose an independent nation not vested with the absolute command in her domestic concerns? Thus we have already observed, that, in taking possession of a country, the nation is presumed to take possession of its government at the same time. We shall here proceed further, and show the natural connection of these two rights in an independent nation. How could she govern herself at her own pleasure in the country she inhabits, if she cannot truly and absolutely dispose of it? And how could she have the full and absolute domain of a place where she has not the command? Another's sovereignty, and the right it comprehends, must deprive her of the free disposal of that place. Add to this the eminent domain which constitutes a part of the sovereignty, and you will the better perceive the intimate connection existing between the domain and the sovereignty of the nation. And, accordingly, what is called the *high domain*, which is nothing but the domain of the body of the nation, or of the sovereign who represents it, is everywhere considered as inseparable from the sovereignty. The *useful domain*, or the domain confined to the rights that may belong to an individual in the state, may be separated from

the sovereignty, and nothing prevents the possibility of its belonging to a nation in places that are not under her jurisdiction. Thus many sovereigns have fiefs and other possessions in the territories of another prince. In these cases they possess them in the manner of private individuals.

"The sovereignty, united to the domain, establishes the jurisdiction of the nation in her territories, or the country that belongs to her. It is her province, or that of her sovereign, to exercise justice in all the places under her jurisdiction; to take cognizance of the crimes committed, and the differences that arise in the country."

Now, that is precisely this case. The government of land, in all that belongs to its title, transmission, inheritance, and alienation, belongs to the municipal authority within whose limits it lies. That is unquestionable. But then there is nothing to prevent another sovereign from possessing the *dominium utile*, the useful domain, or any portion of it. This government may as well hold the lands in California as any individual in the United States. The only difference is this, that the government of the United States holds the lands only for one great purpose; that is, to sell. It holds them in trust to sell for the benefit of the government and people of the United States; and every acre, as soon as sold, falls under the dominion of the municipal sovereign, and is subject to all the rules and regulations prescribed by the local government. The only exception is this; that, in regard to the lands of the United States, that is established by law which, in regard to individuals, might be established by contract; namely, that up to a certain period, or for a certain time, those lands thus the property of the United States shall be so far excluded from the municipal sovereignty under which they are placed, as that they shall not be subject to taxation, or, being owned by non-residents, they shall not be taxed higher than if owned by residents. That is the only exception; and it is as competent to be made between an individual and the State where the land lies, as it is to be imposed by act of Congress.

Sir, there are many instances of States holding lands within the sphere of their own government, and without the sphere of their own government. I think I have understood that, with all her sovereignty, the State of New Jersey never possessed any public domain, nor authority over ungranted lands. All fell, in

that State, I believe, into the possession of the original proprietors; and so it happened in a great portion of New York. Massachusetts claimed a great portion of the western part of New York, and her title to it was acknowledged. She sold her title to Messrs. Gorham and Phelps, and they sold to the Holland Land Company; and thus near one third of that State, perhaps, was held by individuals or corporations. That was never supposed to be any infringement on the rights of sovereignty of New York. The same thing happened in other States.

Now the question of sovereignty in this case, or its effect, by implication, on the public domain, is one that has been thoroughly considered, and clearly and fully decided. The history of the laws and usages of the country in this particular has been fully developed by the honorable member from Illinois;* and I will not go over the track he has trodden. He has shown the precedents taken together to be one way. There may be exceptions here and there; but the general idea has been, in the creation of a State, that its admission as a State has no effect at all on the property of the United States lying within its limits. But, Sir, it is hardly worth while for me, in this state of the atmosphere, to argue this point much at length, as it is settled and decided by the highest judicial authority of the country, precisely and explicitly.

The case will be found in 3d Howard. The judgment in that case was pronounced by the gentleman to whom I referred as having given an opinion quite the other way when he was a member of Congress. Now, Sir, the Supreme Court of the United States, in 1845, say this, excluding all idea that the title to the lands depends on any contract made with the new State. This is the decision of the court: —

"We therefore think that the United States hold the public lands within the new States by force of the deeds of cession, and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess, or have reserved by compact with the new States, for that particular purpose.

"Full power is given to Congress 'to make all needful rules and regulations respecting the territory or other property of the United States.' This authorized the passage of all laws necessary to secure the rights of

* Mr. Douglas.

the United States to the public lands, and to provide for their sale, and to protect them from taxation.

"And all constitutional laws are binding on the people, in the new States and the old ones, whether they consent to be bound by them or not. Every constitutional act of Congress is passed by the will of the people of the United States, expressed through their representatives on the subject-matter of the enactment; and when so passed, it becomes the supreme law of the land, and operates by its own force on the subject-matter, in whatever State or Territory it may happen to be. The proposition, therefore, that such a law cannot operate upon the subject-matter of its enactment without the express consent of the people of the new States where it may happen to be, contains its own refutation, and requires no further examination."

While that decision of the Supreme Court stands, the authority of the United States over the lands lying in the States is based on the law of Congress. The argument of the honorable member from Louisiana is, that, this being a condition, the assent of the other party or side, or the entering into a compact, is indispensable. But this decision of the Supreme Court precisely and exactly overrules all that, as the honorable member will see. If it had happened that the words in this bill were a reservation, or were understood so, his argument would have lost even its apparent force. But it is enough to say that it has been decided directly and distinctly, at every point, that the authority of the United States does so far extend as, by force of itself, *proprio vigore*, to exempt the public lands from taxation, when new States are created in the territory in which the lands lie.

Then, Sir, what has become of all this danger to the public lands? A compact would make our title no better. It is good enough without it; and we need no compact. The language of the decision is explicit; and therefore I think the member from Illinois was entirely right when he proposed the law which he did, the act for the admission of California, omitting all reference to the idea of compact. The third section of this bill was drafted to satisfy doubts. Exceptions had been taken, and it was thought this section would satisfy and remove those exceptions. It was introduced for that laudable and proper purpose; but it stands, according to the decision to which I have referred, just as well without the third section as with it. What is there

to overturn the whole current of our history? What is there to show, in this case, that California has any intention of claiming the ownership of the public lands, as a consequence of her State sovereignty? Why, so far from that, the constitution of California acknowledges the right of the United States to those lands. It goes on, in the ninth article, to provide how those lands which may be granted them by the United States shall be disposed of by the legislature. Is not that an express admission that the public lands within her territory belong to the United States? We must proceed according to, or we must regard, the established precedent in this case; and if any thing be established by law, if any thing be settled by the experience of the government, in the course of the various admissions of States, (nearly half of all the existing States now in the Union,) if any thing is settled by the solemn decision of the court of highest judicature in the country, it is that no such thing as an implication of control over the public lands of the United States arises from the creation of a State, founded on any idea that the public domain necessarily adheres to State sovereignty. Such a notion has never prevailed in the counsels of the country.

Now, Sir, I really hope the honorable member from Louisiana will reconsider the subject; that he will look at what has been decided; that, in this important emergency, he will consider whether it is worth his while to stand on technicalities, and whether it is not rather his duty to conform to the usages and practices of the laws and judicature of the country? The honorable member is younger than most of us, but he will allow me to say, that it is very doubtful whether, in his career as a public man, however long it may be, he will arrive at a more important exigency in the affairs of the country than is now before us. He has taken an important part, and a successful part, in some amendments to the bill. He has accomplished that which he and his friends think important in respect to the territorial governments. Will he not now help us to accomplish his own and a higher work? Will he not reconsider his objections to the admission of California, so far as those objections arise to which I have adverted? This is a common case, an ordinary case; every doubt about it is shut up and concluded by solemn decisions, so far as this objection goes, and ought to be withheld from opposition to the admission of California.

Then there is another objection. He says that the boundaries are wrong, extraordinarily large, unnatural, and impolitic. Now, Sir, these are questions in a great measure depending upon the peculiar circumstances of the case, and the situation, soil, surface, and climate of the country. At an early part of the session, I expressed an opinion, which I still hold, that, if the subject were before us now, we could not make a better boundary for California than is made in her constitution. I came to that opinion from my information respecting the formation of the country, and all the circumstances connected with it. The Senator says the territory of California is three times greater than the average extent of the new States of the Union. Well, Sir, suppose it is. We all know that it has more than three times as many mountains, inaccessible and rocky hills, and sandy wastes, as are possessed by any State of the Union. But how much is there of useful land? how much that may be made to contribute to the support of man and of society? These ought to be the questions. Well, with respect to that, I am sure that everybody has become satisfied that, although California may have a very great sea-board, and a large city or two, yet that the agricultural products of the whole surface now are not, and never will be, equal to one half part of those of the State of Illinois; no, nor yet a fourth, or perhaps a tenth part. In the first place, the entire country, extending from the eastern bottom of the Sierra Nevada, as far as the Gila, is a desert of sand. That takes off thirty or forty thousand square miles of the whole territory, and it is a pretty important reduction. Then, look again at the mountains. There is undoubtedly a long valley on the Sacramento and San Joaquin of tolerably good land, and there may be some good land between the coast mountains and the sea; but, on the whole, nobody will say that, in quantity of good land, or of tolerably good land, there is any excess; on the contrary, there is far less than belongs to most of the new States.

Then there is another consideration. If you separate South California from North California, what will be the value of South California by itself? Why, look upon the map and the question will be answered. Suppose we run the line of 36° 30′ from the sea across to New Mexico; what have you? You have mountains, and you have those vast tracts of land

east of the mountains; but from the best information I can obtain, and I have consulted what I suppose every one concedes is the best authority, there cannot be at most, within what would constitute the territory of South California, more than five thousand square miles of good land. Beyond that all is desert lands and mountains. I speak now of lands that may be tilled and cultivated. We must, as I have said, look at climate as well as the surface of the land. Gentlemen will please to remember, that, in this part of California, eight months in every year roll on without a drop of rain falling, and there is not within the whole of it any land whatever that can be cultivated *without irrigation*. So small are the streams, when you depart from those two rivers, the Sacramento and the San Joaquin, that they do not supply water for the cultivation of the very small portion of the land that otherwise might be made tillable. What, then, will be the value of this territory? The gentleman from Louisiana contended for the rights of the South in regard to it. Where is there any value in it? Is it any thing more than a mere nominal right, if it be that? Can it be of any use whatever? Could the South make any use of that territory if it were now a territory, and free from any restraint whatever, which they cannot make of it as part of a State? I think, therefore, that it is a dispute where there is no substantial value in the matter contested.

Mr. President, we ought to look to what is the most practicable thing we can do. The member from Louisiana desires to draw across the territory the line of 36° 30′, the boundary commonly called the Missouri Compromise. Now, is that a practicable measure? Does the gentleman, or do his friends, suppose that, either now or hereafter, by this Congress or the next, any such thing can be done? Looking at the fact, in the first place, that this Southern California is part of California, and within her prescribed boundaries, and next, to the known state of opinion in that region, I have yet to learn, (though I have heard it suggested to the contrary,) after some diligent examination of the proceedings of the convention, that there is any disposition or wish, on the part of the people, from Monterey down to San Diego, to remain by themselves, or form a State by themselves. I find that a member of the convention, Mr. Carrillo, I think, from San Angeles, in the early part of the de-

bate, having in the excitement of discussion with some northern members suggested such an idea, afterwards withdrew it in the further progress of the debate, as will be found on page 446 of the report. And I see no evidence from the country to the south of 36° 30′ that it is desirous to set up or to have a government for itself, or to be otherwise associated in government than it is. It is also to be remembered, Mr. President, that this Lower California is the old part of California, and has been settled from one hundred and fifty to two hundred years. Its habits are fixed, and, although not a subject to dwell on, it may be fit to refer to it. So far as I see, in the debates in the California convention, the indications of a fixed purpose to exclude slavery from all parts of California, that sentiment was most strongly expressed by persons, members of the convention, coming from this old part, this southern part, the lower part of California; and therefore I do not see that there is any human probability of their consenting to its admission. Is it not better, then, to take this bill as it stands? We have determined the question in regard to the territories, and, taking it as it stands under the constitution of California, within her borders, and looking to the practical, I may say the certain, operation of things, is it not our bounden duty to bring California into the Union?

Mr. President, the idea most urgent and pressing on my mind in all this matter is, that it is our duty to *accomplish something* on the subject of these territories, to accomplish something that will be as satisfactory to all parts of the country as we can make it. I had no hand in introducing these territories into the Union; I have no responsibility, therefore, for the evils that spring out of that act. But here they are upon us. I wish to deal with the subject in the fairest, most expedient, and just manner, and, according to my fixed opinion, there is nothing to be gained by our discussing, or applying, or agitating the vexed matter of slavery over any of these territories. I wish for my part, as an American, or one who desires to carry on and maintain this government, to see a course adopted that will give all the satisfaction we can give, and that will accomplish something towards restoring peace and quiet to the Union.

Mr. President, as has already been said, and as is known to

us all, we have been here six or seven months. We are called upon to make some disposition of these territories. I think that before all, in regard to time, is the question of the admission of California; and I hope, therefore, that we shall have to-day, or when the question is taken, such a vote on the proposition of the Senator from Louisiana as will decide the case, and show that the judgment of the Senate, as it is of the whole country, is, that California should be admitted without further delay than is necessary by the terms of the act.

I hope, therefore, without going into an elaborate professional argument, that the member from Louisiana will see that there is nothing to dispute about; will see that, without any act of Congress, there is no danger that California will undertake to run away with the public lands, or undertake to tax the public lands or non-residents; and therefore, in respect to California, that we may have a vote which shall be decisive, and so far show to the country that, as to this part of the case, it is a determined question.

The next day (28th June) Mr. Webster spoke as follows, on the same subject, in reply to Mr. Soulé: —

I shall occupy but a very brief time, I hope, in the remarks which I shall make in reply to the honorable member from Louisiana, rather by way of an explanation of what I have heretofore said, than as a discussion of the subject anew. The question really between us, as a substantial question, is this, if there be any; namely, whether the assent or agreement of California is necessary, in order to secure to the United States the property in the public lands, or public domain, now belonging to the United States, and lying within the proposed boundaries of California? That is the question. Is it necessary that something further be done on the part of California to make sure the title of the United States, and their possession and enjoyment to and of the public lands? The honorable gentleman holds the affirmative of that proposition, and, with proper deference, I hold the negative. And I stand upon the history of the country, from the period of the admission of the first State where there was public land intended to be disposed of for the benefit of the United States, I mean Ohio, and that was in the year 1803. The honorable member has said,

that, though in the act admitting Ohio there is a condition inserted, as there is here, that the public lands shall not be taxed, there is no stipulation by Ohio that the primary disposal of the soil shall not be interfered with; and that either from the consideration that without any such condition the primary disposition of the soil could not be interfered with by the State, or from the fact that a proper provision, applicable to the whole of the Northwestern Territory, had been already inserted in the Ordinance of 1787. I care not which way it be taken. What I mean to say is this: that from the first establishment of States in this Union over territory possessed by the United States, or over limits within which the United States had more or less public land, it has not been regarded as a part of the public law of America that the States, by merely being created States, by any implication arising from their sovereignty, or otherwise, have obtained, or could obtain, any right whatever to the public property of the United States within their limits. Such, I understand, has been the whole history of the country; and such was precisely the decision of the Supreme Court in the case referred to by me yesterday. The honorable member from Louisiana is kind enough to admit that, if this question were to be discussed in a forensic form, if we were now before a court to settle this question as a question of law, that the decision would be against him.

Mr. Soulé. — Will the Senator allow me to say, that what I stated was, that, if we were in another forum, the authority quoted by the distinguished Senator would carry with it greater weight than it would be entitled to in this body?

Let me ask, why should that authority, if quoted to-day in the Supreme Court, have any greater respect or weight attached to it than if quoted here? The suggestion of the honorable member was, that this is a political question. It is just the question which has been decided in the case referred to. It is no question of expediency, no question of wisdom or folly, of prudence or imprudence in matters of political concern. It is just exactly a question of public law. It turns on the effect of the treaty with Spain of 1798, upon the provisions of the Constitution and the acts of Congress admitting Alabama into the Union. That is a judicial question emphatically, a question of

high public law; and is just exactly the same question here to-day that it was when before the Supreme Court. And, however we decide it here, if dispute arises about it, it must go back before the same tribunal to be there again adjudged. It is, therefore, no question of political expediency, as I have said, and no question of what is wise or unwise, but a question of constitutional law; and that question has been decided by the highest tribunal in this government. And it has been decided, as I should have said yesterday, and perhaps did say, not upon any ground of conflict between the sovereign power in this government and the sovereign power in a State government. Not at all. The court rejected that ground. The court proceeded upon the idea, that the local sovereignty necessarily had control over all lands lying within its limits, except so far as it had parted with that control to individuals, and except so far as the United States, by virtue of the constitutional power of Congress, retained control over the public domain lying within such State.

The honorable member has said, with great propriety, that, if we separate the useful domain from the sovereignty, why, then the useful domain may inure to individuals, as well as to governments; and the gentleman will remember that I said the very same thing yesterday, in just so many terms. But, then, the gentleman seems to alarm us by the danger of this construction. He says it would enable this government to grasp all the lands lying within a State, and establish a federal tenantry within that State. I think the grasp of the gentleman's imagination, in this respect, is far wider than any possible grasp of jurisdiction by this government. He must take along with the general proposition the proper limitation; and that is, that the United States hold these public lands within a State only for sale and settlement, or other proper disposal. The language of all our history, of the cessions, the Ordinance, the Constitution, and all the laws, is in accordance with this idea. The United States hold the lands, not to cultivate, not to lease, but simply to sell or dispose of. They protect the lands till sold or disposed of, and there their authority ends; and every acre, when sold, comes under the proper dominion of the local sovereignty.

The honorable member thinks I did him some injustice in omitting to notice what was contained in his amendment in respect to the mines. I certainly did not intend any injustice or

any omission. But it struck me that the question was just the same in regard to the mines as in regard to the ordinary lands which the United States obtained from Mexico by the treaty. What is true of one must be true of the other. Whatever was the government right of Mexico, either to the lands or mines, passes to the government of the United States. Whatever right, in lands or mines, had passed from the government of Mexico into private ownership remains in such ownership, exactly as if the sovereignty had never been changed. Now, it is of no sort of consequence to this argument, or the question arising in this case, what were the laws of Mexico, whether derived from Spain, or established by her own sovereignty, after she had been separated from Spain. So far as private rights were vested in lands or mines, they will remain vested, and every thing that still adhered to the sovereignty of Mexico has passed to the United States, to be disposed of as the United States shall think proper. If there be public domain in the mineral lands, the United States will be entitled to hold them and to dispose of them; and if individuals were entitled to hold any part of them, they will be entitled to continue to hold them. The honorable member's amendment proposes that California shall not obstruct or impede any control which the United States may wish to exercise over the mining region. Need we take a bond from California, that she will not interpose her power to obstruct the Constitution and laws of the United States? Any thing done, or to be done, or omitted to be done, by California, can neither enlarge nor diminish the power of the United States over the lands in California. Nothing is clearer, as a general rule, than that the constitutional powers of Congress can no more be enlarged by the assent of States than they can be diminished by their dissent.

The honorable member alludes again to what he considers a possible danger, of great magnitude to the rest of the Union, from the large boundaries assigned to California; since he thinks there may be within these boundaries one, or two, or three millions of people, at some time to come. Pray, Mr. President, will the honorable member allow me to ask if he supposes the division of the territory into two Territories or two States will tend to retard the population of the whole, so that there will not be, in the whole of the two States, as great a population as

there would be in one? I did say yesterday, and said truly, that I thought the case a very urgent and important one; that I saw danger, and great danger, likely to arise from further delay in admitting California into the Union. These apprehensions may have been unfounded; but they were real, genuine, and honest. We take from her the income of her ports, we take her commercial revenues, without affording her any thing in return. How long is it likely that such a state of things will be continued, and be satisfactory to the people of California? But, says the honorable member, is it possible that California dreams of secession? No, Mr. President; I hope she does not dream of any thing of that sort; but she thinks of accession. She must come into the Union before she can go out of it. I think that is a plain proposition. The gentleman has stated, truly enough, that there are ties that bind the people of California to the United States. I hope these ties will be found to exist always, and in all their force. I hope, too, that the argument will be applied, as it may be with equal force, in places not so far off as California. I hope these ties will have a prevalence among the people everywhere and always, which will secure their attachment to the Union.

Mr. King. Mr. President, I wish to call the attention of the honorable Senator to that part of the amendment of the Senator from Louisiana, which relates to the taxing of the public lands. Is the honorable Senator prepared to give his opinion with respect to the power vested in the State of California, if brought into the Union without any relinquishment of that right? Does he think that the power to tax the public lands of the United States does not and will not exist in the State of California?

That principle is entirely embraced within the opinion of the Supreme Court. The power of taxing the public domain is completely denied to the States by virtue of the general authority of Congress. And, say the court, "by virtue of that authority which enables them to make rules and regulations with respect to the territory, the new States, without any compact, can neither interfere with the primary disposal of the soil, nor tax the public lands."

Mr. Soulé's amendment was disagreed to by a vote of ayes 19, nays 36.

Last Illness and Death of General Taylor*

On the 9th of July, 1850, the "Compromise Bill" being under discussion, Mr. Butler of South Carolina was addressing the Senate, but gave way to Mr. Webster, who rose and said: —

Mr. President, — I have permission from the member from South Carolina to interrupt the progress of his speech, in order to make a solemn and mournful suggestion to the Senate. The intelligence which within the last few moments has been received indicates that a very great misfortune is now impending over the country. It is supposed by medical advisers and others that the President of the United States cannot live many hours. This intimation comes in a shape so authentic, and through so many channels of communication, and all tending to the same result, that I have thought it my duty to move the Senate to follow the example which has already been set in the other branch of the national legislature.

At half-past eleven o'clock to-day I called at the President's mansion to inquire after his health. I was informed that he had passed a very bad night; that he was exceedingly ill this morning, but that at that moment he was more easy and more composed. I had hardly reached my seat in the Senate when it was announced to me that the fever had suddenly returned upon him with very alarming symptoms; that appearances of congestion were obvious; and that it was hardly possible his life could be prolonged through the day.

With the permission, therefore, of my honorable friend from

* Remarks in the Senate of the United States, on the 9th and 10th of July, 1850.

South Carolina, who, I am sure, shares those feelings on this occasion which quite disqualify us for the performance of our duties, even in this very important crisis of public affairs, I venture to move the Senate that it do now adjourn.

The Senate accordingly adjourned.

On the next day, July 10th, the following message was received from the Vice-President, Mr. Fillmore: —

"*Washington, July* 10, 1850.

"Fellow-citizens of the Senate and of the House of Representatives:

"I have to perform the melancholy duty of announcing to you that it has pleased Almighty God to remove from this life Zachary Taylor, late President of the United States. He deceased last evening, at the hour of half-past ten o'clock, in the midst of his family and surrounded by affectionate friends, calmly and in the full possession of all his faculties. Among his last words were these, which he uttered with emphatic distinctness: 'I have always done my duty; I am ready to die; my only regret is for the friends I leave behind me.'

"Having announced to you, fellow-citizens, this most afflicting bereavement, and assuring you that it has penetrated no heart with deeper grief than mine, it remains for me to say that I propose, this day, at twelve o'clock, in the hall of the House of Representatives, in the presence of both houses of Congress, to take the oath prescribed by the Constitution, to enable me to enter on the execution of the office which this event has devolved on me.

"MILLARD FILLMORE."

Mr. Webster then submitted the following resolutions: —

"*Resolved*, That the two houses will assemble this day in the hall of the House of Representatives, at twelve o'clock, to be present at the administration of the oath prescribed by the Constitution to the late Vice-President of the United States, to enable him to discharge the powers and duties of the office of President of the United States, devolved on him by the death of Zachary Taylor, late President of the United States.

"*Resolved*, That the Secretary of the Senate present the above resolution to the House of Representatives, and ask its concurrence therein."

These resolutions having been unanimously agreed to, Mr. Downs of Louisiana, as one of the Senators of the State of which General Taylor was a citizen, made a feeling address to the Senate on the melancholy event, and concluded by moving the following resolutions: —

"Whereas it has pleased Divine Providence to remove from this life Zachary Taylor, late President of the United States, the Senate, sharing

in the general sorrow which this melancholy event must produce, is desirous of manifesting its sensibility on this occasion: Therefore,

"*Resolved*, That a committee, consisting of Messrs. Webster, Cass, and King, be appointed on the part of the Senate to meet such committee as may be appointed on the part of the House of Representatives, to consider and report what measures it may be deemed necessary to adopt to show the respect and affection of Congress for the memory of the illustrious deceased, and to make the necessary arrangements for his funeral.

"*Ordered*, That the Secretary of the Senate communicate the foregoing resolution to the House of Representatives."

Mr. Webster then addressed the Senate as follows: —

Mr. Secretary, — At a time when the great mass of our fellow-citizens are in the enjoyment of an unusual measure of health and prosperity, throughout the whole country, it has pleased Divine Providence to visit the two houses of Congress, and especially this house, with repeated occasions for mourning and lamentation. Since the commencement of the session, we have followed two of our own members to their last home; and we are now called upon, in conjunction with the other branch of the legislature, and in full sympathy with that deep tone of affliction which I am sure is felt throughout the country, to take part in the due solemnities of the funeral of the late President of the United States.

Truly, Sir, was it said in the communication read to us, that a "great man has fallen among us." The late President of the United States, originally a soldier by profession, having gone through a long and splendid career of military service, had, at the close of the late war with Mexico, become so much endeared to the people of the United States, and had inspired them with so high a degree of regard and confidence, that, without solicitation or application, without pursuing any devious paths of policy, or turning a hair's breadth to the right or left from the path of duty, a great, and powerful, and generous people saw fit, by popular vote and voice, to confer upon him the highest civil authority in the nation. We cannot forget that, as in other instances so in this, the public feeling was won and carried away, in some degree, by the *éclat* of military renown. So it has been always, and so it always will be, because high respect for noble deeds in arms has been,

and always will be, outpoured from the hearts of the members of a popular government.

But it will be a great mistake to suppose that the late President of the United States owed his advancement to high civil trust, or his great acceptableness with the people, to military talent or ability alone. I believe, Sir, that, associated with the highest admiration for those qualities possessed by him, there was spread throughout the community a high degree of confidence and faith in his integrity, and honor, and uprightness as a man. I believe he was especially regarded as both a firm and a mild man in the exercise of authority; and I have observed more than once, in this and in other popular governments, that the prevalent motive with the masses of mankind for conferring high power on individuals is a confidence in their mildness, their paternal, protecting, prudent, and safe character. The people naturally feel safe where they feel themselves to be under the control and protection of sober counsel, of impartial minds, and a general paternal superintendence.

I suppose, Sir, that no case ever happened, in the very best days of the Roman republic, when a man found himself clothed with the highest authority in the state under circumstances more repelling all suspicion of personal application, of pursuing any crooked path in politics, or of having been actuated by sinister views and purposes, than in the case of the worthy, and eminent, and distinguished, and good man whose death we now deplore.

He has left to the people of his country a legacy in this. He has left them a bright example, which addresses itself with peculiar force to the young and rising generation; for it tells them that there is a path to the highest degree of renown, straight onward, steady, without change or deviation.

Mr. Secretary, my friend from Louisiana* has detailed shortly the events in the military career of General Taylor. His service through his life was mostly on the frontier, and always a hard service, often in combat with the tribes of Indians along the frontier for so many thousands of miles. It has been justly remarked, by one of the most eloquent men

* Mr. Downs.

whose voice was ever heard in these houses,* that it is not in Indian wars that heroes are celebrated, but that it is there that they are formed. The hard service, the stern discipline, devolving upon all those who have a great extent of frontier to defend, often, with irregular troops, being called on suddenly to enter into contests with savages, to study the habits of savage life and savage war, in order to foresee and overcome their stratagems, all these things tend to make hardy military character.

For a very short time, Sir, I had a connection with the executive government of this country; and at that time very perilous and embarrassing circumstances existed between the United States and the Indians on the borders, and war was actually carried on between the United States and the Florida tribes. I very well remember that those who took counsel together on that occasion officially, and who were desirous of placing the military command in the safest hands, came to the conclusion, that there was no man in the service more fully uniting the qualities of military ability and great personal prudence than Zachary Taylor; and he was appointed to the command.

Unfortunately, his career at the head of this government was short. For my part, in all that I have seen of him, I have found much to respect and nothing to condemn. The circumstances under which he conducted the government for the short time he was at the head of it have been such as perhaps not to give him a very favorable opportunity of developing his principles and his policy, and carrying them out; but I believe he has left on the minds of the country a strong impression, first, of his absolute honesty and integrity of character; next, of his sound, practical good-sense; and, lastly, of the mildness, kindness, and friendliness of his temper towards all his countrymen.

But he is gone. He is ours no more, except in the force of his example. Sir, I heard with infinite delight the sentiments expressed by my honorable friend from Louisiana who has just resumed his seat, when he earnestly prayed that this event might be used to soften the animosities, to allay party criminations and recriminations, and to restore fellowship and good

* Fisher Ames.

feeling among the various sections of the Union. Mr. Secretary, great as is our loss to-day, if these inestimable and inappreciable blessings shall have been secured to us even by the death of Zachary Taylor, they have not been purchased at too high a price; and if his spirit, from the regions to which he has ascended, could see these results flowing from his unexpected and untimely end, if he could see that he had entwined a soldier's laurel around a martyr's crown, he would say exultingly, "Happy am I, that by my death I have done more for that country which I loved and served, than I did or could do by all the devotion and all the efforts that I could make in her behalf during the short span of my earthly existence."

Mr. Secretary, great as this calamity is, we mourn not as those without hope. We have seen one eminent man, and another eminent man, and at last a man in the most eminent station, fall away from the midst of us. But I doubt not there is a Power above us exercising over us that parental care that has guarded our progress for so many years. I have confidence still that the place of the departed will be supplied; that the kind, beneficent favor of Almighty God will still be with us, and that we shall be borne along, and borne upward and upward on the wings of his sustaining providence. May God grant that, in the time that is before us, there may not be wanting to us as wise men, as good men for our counsellors, as he whose funeral obsequies we now propose to celebrate!

The Compromise Measures*

Mr. President, — It was my purpose, on Tuesday of last week, to follow the honorable member from South Carolina,† who was addressing the Senate on the morning of that day, with what I then had, and now have, to say upon the subject of this bill. But before the honorable member had concluded his remarks, it was announced to us that the late chief magistrate of the United States was dangerously ill, and the Senate was moved to adjourn. The solemn event of the decease of the President took place that evening.

Sir, various and most interesting reflections present themselves to the minds of men, growing out of that occurrence. The chief magistrate of a great republic died suddenly. Recently elected to that office by the spontaneous voice of his fellow-countrymen, possessing in a high degree their confidence and regard, ere yet he had had a fair opportunity to develop the principles of his civil administration, he fell by the stroke of death. Yet, Sir, mixed with the sad thoughts which this event suggests, and the melancholy feeling which spread over the

* A Speech delivered in the Senate of the United States, on the 17th of July, 1850, on the Bill reported by the Committee of Thirteen, commonly called "The Compromise Bill."

The following motto was prefixed to the Speech in the pamphlet edition: —

"Alas! alas! when will this speculating against fact and reason end? What will quiet these panic fears which we entertain of the hostile effect of a conciliatory conduct? Is all authority of course lost when it is not pushed to the extreme?

"All these objections being in fact no more than suspicions, conjectures, divinations, formed in defiance of fact and experience, they did not discourage me from entertaining the idea of conciliatory concession, founded on the principles which I have stated." — Edmund Burke.

† Mr. Butler.

whole country, the real lovers and admirers of our constitutional government, in the midst of their grief and affliction, found something consoling and gratifying. The executive head of a great nation had fallen suddenly; no disturbance arose; no shock was felt in the great and free republic. Credit, public and private, was in no way disturbed, and danger to the community or individuals was nowhere felt. The legislative authority was neither dissolved nor prorogued; nor was there any further interruption or delay in the exercise of the ordinary functions of every branch of the government, than such as was necessary for the indulgence, the proper indulgence, of the grief which afflicted Congress and the country. Sir, for his country General Taylor did not live long enough; but there were circumstances in his death so favorable for his own fame and character, so gratifying to all to whom he was most dear, that he may be said to have died fortunately.

"That life is long which answers life's great end."

A gallant soldier, able and experienced in his profession, he had achieved all that was to be expected by him in that line of duty. Placed at the head of the government, as I have said, by the free voice of the people, he died in the full possession of the gratitude of his country. He died in the midst of domestic affections and domestic happiness. He died in the consciousness of duty performed. He died here, in the midst of the councils of his country; which country, through us, its organs, has bestowed upon him those simple, but grand and imposing rites, which the republic confers on the most distinguished of her sons.

"Such honors Ilium to her hero paid,
And peaceful slept the mighty Hector's shade."

He has run the race destined for him by Providence, and he sleeps with the blessings of his countrymen.

Mr. President, I proceed now to say upon the subject before us what it was my purpose then to have said. I begin by remarking, that the longer we stay in the midst of this agitating subject, the longer the final disposition of it is postponed, the greater will be the intensity of that anxiety which possesses my breast. I wish, Sir, so far as I can, to harmonize opinions. I wish to facilitate some measure of conciliation. I wish to consummate some proposition or other, that shall bring op-

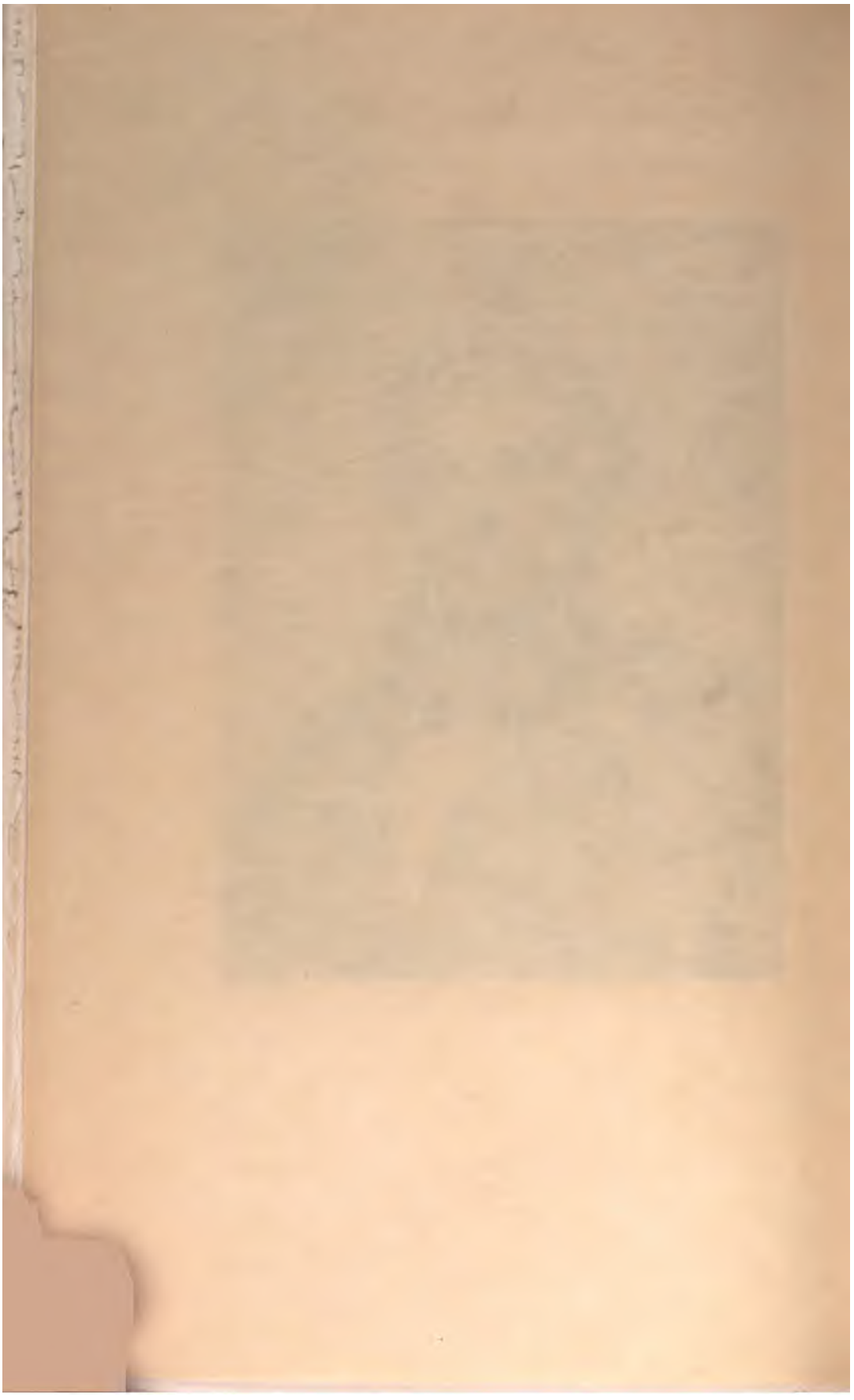
posing sentiments together, and give the country repose. It is not my purpose to-day to compare or contrast measures or plans which have been proposed. A measure was suggested by the President* in his message of 1848. The same measure, substantially, was again recommended by the late President,† in his message of 1849. Then there is before us this proposition of the Committee of Thirteen. I do not regard these as opposite, conflicting, or, to use the language of the day, antagonistical propositions at all. To a certain extent, they all agree. Beyond what was proposed either by Mr. Polk or by the late President, this report of the committee, and the bill now before us, go another step. Their suggestions were, and especially that of the late President, to admit California, and for the present to stop there. The bill before the Senate proposes to admit California, but also to make a proper provision, if the Senate deem the provision proper, for the Territories of New Mexico and Utah. I confess, Sir, my judgment from the first has been, that it was indispensable that Congress should make some provision for these Territories; but I have been indifferent whether the things necessary to be done should be done in one bill or in separate bills, except that, as a matter of expediency, it was and has been my opinion, from the beginning, that it would have been better to have proceeded measure by measure. That was a matter of opinion upon the expediency of the course. I was one of the Committee of Thirteen. Circumstances called me to my home during its deliberations; and the general opinion of the committee at that time seemed to be, and I thought the better opinion, in favor of beginning with California, and then taking up the other measures in their order. Upon further consideration, the committee, very fairly, I doubt not, and in the exercise of their best judgment and discretion, thought fit to unite the three things which are in this bill. Well, Sir, whether singly or together, each and every one of these objects meets my approbation, and they are all, in my judgment, desirable.

In the first place, I think it is a desirable object to admit California. I do not conceal from myself, nor do I wish to conceal from others, that California is before us with some degree

* Mr. Polk. † General Taylor.

Zachary Taylor

From the Painting by G. P. A. Healy, Corcoran Art Gallery, Washington



of irregularity stamped upon her proceedings. She has not been through the previous process of territorial existence. She has formed her constitution without our consent. But I consider, Sir, that California, from the extraordinary circumstances which have attended her birth and progress to the present moment, entitles herself, by the necessity of the case, to an exemption from the ordinary rules. Who expected to see such a great community spring up in such an incredibly short time? Who expected to see a hundred or a hundred and fifty thousand people engaged in such an employment, with so much activity, and enterprise, and commerce, drawing to themselves the admiration and regard of the whole world, in the period of a few months? Well, Sir, she comes to us with a constitution framed upon republican models, and conformable to the Constitution of the United States; and under these circumstances, still regarding her application as premature and irregular, I am for admitting her, as there has been nothing done which her admission on our part will not cure. She will be lawfully in the Union if we admit her, and therefore I have no hesitation upon that point.

Then, with respect to the Territories, I have been and I am of opinion, that we should not separate, at the end of this session of Congress, without having made a suitable provision for their government. I do not think it safe to allow things to stand as they are. It has been thought that there may be such a thing as admitting California, and stopping there. Well, it is not impossible, in the nature of things, that such a course of policy should be adopted, if it would meet the proper concurrence. But then I have always supposed, Sir, that, if we were now acting upon California as a separate measure, and should, in the prosecution of that measure, admit her into the Union, the inquiry would immediately arise, What is next to be done? I have never supposed that the questions respecting the Territories would thereby be put to rest, even for the present. I have supposed, on the contrary, that the very next thing to be done would be to take up the subject of a government for the Territories, and prosecute that subject until it should be in some manner terminated by Congress, to the exclusion of all ordinary subjects of legislation. I am not authorized to state, Sir, I do not know, the opinion of the honorable members of

the Committee on Territories. The honorable member from Illinois, who is at the head of that committee, sits near me, and I take it for granted that he can say whether I am right or not in the opinion, that, if we should this day admit California alone, he would to-morrow feel it his duty to bring in a bill for the government of the Territories, or to make some disposition of them.

Mr. Douglas (in a low voice). Does the Senator wish an answer?

I should like to know the honorable member's purpose.

Mr. Douglas. Mr. President, if California should be admitted by herself, I should certainly feel it my duty, as the chairman of the Commitee on Territories, to move to take up the subject of the Territories at once, and put them through, and also the Texas boundary question, and to settle them by detail, if they are not settled in the aggregate, together. I can say such is the opinion and determination of a majority of that committee.

Then, Sir, it is as I supposed. We should not get rid of the subject, even for the present, by admitting California alone. Now, Sir, it is not wise to conceal our condition from ourselves. Suppose we admit California alone. My honorable friend from Illinois brings in, then, a bill for a territorial government for New Mexico and Utah. We must open our eyes to the state of opinion in the two houses respectively, and endeavor to foresee what would be the probable fate of such a bill. If it be a bill containing a prohibition of slavery, we know it could not pass this house. If it be a bill without such prohibition, we know what difficulty it would encounter elsewhere. So that we very little relieve ourselves from the embarrassing circumstances in which we are placed by taking up California and acting upon it alone. I am therefore, Sir, decidedly in favor of passing this bill in the form in which it is upon your table.

But, Sir, if it be the pleasure of the Senate to approve the motion which is shortly to be made for laying this whole measure upon the table, and thereby disposing of this bill, I can only say, for one, that, if this measure be defeated by that proceeding, or any other, I hold myself not only inclined, but bound, to consider any other measures which may be suggested. The case is pressing, and the circumstances of the coun-

try are urgent. When have we ever before had any foreign question, any exterior question, if I may say so, that has occupied the consideration of Congress for seven months, and yet been brought to no result? When have we had a subject before us that has paralyzed all the operations of government, that has displaced the regular proceedings of the two houses of Congress, and has left us, at the end of seven months of a session, without the ordinary annual appropriation bills? What is now proposed is, to make a territorial government for New Mexico and Utah, without restriction. I feel authorized to assume, from the circumstances before us, that it is in the power of gentlemen of the South to decide whether this territorial government without restriction, as provided in the bill, shall be established or not. I have voted against restriction for the reasons which I have already given to the Senate, and may repeat; but it now lies with Southern gentlemen to say whether this bill, thus providing for territorial governments without restriction, shall pass or not; and they will decide that question, doubtless, by reference to what is likely to happen if it should not pass.

Now, Sir, I am prepared to say, that, if this measure does not pass, I am ready to support other proper measures that can and will pass. I shall never consent to end this session of Congress until some provision is made for New Mexico. Utah is less important. Let her repose herself upon the borders of the Salt Lake another year, if necessary. But as to New Mexico, situated as she is, with a controversy on her hands with her more powerful neighbor, Texas, I shall never consent to the adjournment of Congress without a provision made for avoiding a collision, and for the settlement of the point in controversy, between that Territory and that State. I have the strongest objection to a premature creation of States. I stated that objection at length in the Senate some two years ago. The bringing in of small States with a representation in the Senate equal to the representation of the largest States in the Union, and with a very small number of people, deranges and disturbs the proper balance between the Senate and the House of Representatives. It converts the Senate into a kind of oligarchy. There may be six, or eight, or ten small States in the Southwest, having as many Senators in Congress as they

have Representatives. This objection is founded upon the incongruity which such a case produces in the constitutional relation of the Senate and the House. It disfigures the symmetry of the government; and in this respect it does not make the slightest possible difference, in my estimation, whether they are to be free States or slave States. I am not disposed to convert a Territory that is immature, and not fit to come into the Union on account of want of population, into a State, merely because it will be a free State. That does not weigh with me a hair. But my objection has been and is, as I have stated, or attempted to state, that the admission of States with so small an amount of population deranges the system. It makes the Senate what it was never intended by the Constitution to be. Nevertheless, Sir, as I favor the admission of California, although she presents herself before us with some irregularities in her course of proceeding, so there are greater evils, in my judgment, than the admission of New Mexico as a State now, at once, or than the provision that she shall be admitted in a certain time hereafter. I do not think that so great an evil as it would be to leave New Mexico without a government, without protection, on the very eve of probable hostilities with Texas, so far as I can discern; for, to my mind, there is the highest degree of probability that there will arise collisions, contests, and, for aught I know, bloodshed, if the boundaries of New Mexico are not settled by Congress.

Sir, I know no question so important, connected with all these matters, as this settlement of the Texan boundary. That immediately and intimately, in my judgment, touches the question of the duration of peace and quiet in the country; and I cannot conceive how gentlemen, looking upon that subject in all its aspects, can satisfy themselves with the idea of retiring from their seats here, and leaving it where it is. I should be derelict to my duty if I did not persist, to the last, in bringing it to a decision by the authority of Congress. If a motion be made, as it has been announced is intended, to lay this bill upon the table, and that motion prevails, this measure is at an end. Then there must be a resort to some other measures; and I am disposed to say that, in case of the failure of this bill, I shall be in favor of a bill which shall provide for three things; namely, the admission of California with its

present constitution and boundaries, the settlement of the Texan boundary, and the admission of New Mexico as a State. Such a measure will produce a termination of the controversies which now agitate us, and relieve the country from distraction.

Sir, this measure is opposed by the North, or some of the North, and by the South, or some of the South; and it has the remarkable misfortune to encounter resistance by persons the most directly opposed to each other in every matter connected with the subject under consideration. There are those, (I do not speak, of course, of members of Congress, and I do not desire to be understood as making any allusion whatever, in what I may say, to members of this house or of the other,) there are those in the country who say, on the part of the South, that the South by this bill gives up every thing to the North, and that they will fight it to the last; and there are those, on the part of the North, who say, that this bill gives up every thing to the South, and that they will fight it to the last. And really, Sir, strange as it may seem, this disposition to make battle upon the bill, by those who never agreed in any thing before under the light of heaven, has created a sort of fellowship and good feeling between them. One says, Give me your hand, my good fellow; you mean to go against this bill to the death, because it gives up the rights of the South; I mean to go against the bill to the death, because it gives up the rights of the North; let us shake hands and cry out, "Down with the bill!" and then unitedly raise the shout,

> "A day, an hour, of virtuous liberty
> Is worth a whole eternity in bondage!"

Such is the consistency of the opposition to this measure.

Now, Sir, I ascribe nothing but the best and purest motives to any of the gentlemen, on either side of this chamber, or of the other house, who take a view of this subject which differs from my own. I cannot but regret, certainly, that gentlemen who sit around me, and especially my honorable colleague,* and my friends from Massachusetts in the other house, are obliged, by their sense of duty, to oppose a measure which I feel bound by my conscience to support to the utmost of my ability. They are just as high-minded, as patriotic, as pure, and every way as

* Mr. Davis.

well-intentioned as I am; and, Sir, if it was put to vote, and the question were to be decided by a majority, I must confess my friends from Massachusetts would outvote me. But still my own opinions are not in the least degree changed. I feel that every interest of the State, one of whose representatives I am, as well as every great interest of the whole country, requires that this measure, or some measure as healing, composing, and conciliatory as this, should be adopted by Congress before its adjournment. That is my object, and I shall steadily pursue it.

Let us examine this. If I may analyze the matter a little, both in regard to the North and the South, Massachusetts, being a Northern State, may be taken as a representative of Northern interests. What does she gain by this bill? What does she lose by it? If this bill passes, Massachusetts and the North gain the admission of California as a free State, with her present constitution, a very highly desirable object, as I believe, to all the North. She gains, also, the quieting of the New Mexican question and the Texas boundary, which, in my judgment, as I have already said, is the most important of all these questions, because it is the one most immediately menacing evil consequences, if such consequences be not arrested by this or some similar measure. She gains the quiet of New Mexico, and she gains the settlement of the Texas boundary, objects all desirable and most important. More than that, Sir, she gains, and the whole North gains, and the whole country gains, the final adjustment of by far the greater part of all the slavery questions. When I speak of this bill in that connection, I mean also to connect it with the other subjects recommended by the committee; and I say that, if the whole report of that committee could be carried out, one of the greatest of all possible benefits will be secured; that is, the settlement, to an extent of far more than a majority of them all, of the questions connected with slavery which have so long agitated the country. And then, Sir, Massachusetts, and the North, and the whole country, gain the restoration of this government to the ordinary exercise of its functions. The North and the South will see Congress replaced in its position of an active, beneficial, parental legislature for the whole Union. Consider, Sir, what has happened? While it is of the utmost importance that this restoration of Congress to the exercise of its ordinary functions should be accom-

plished, here we are, seven or eight months from the beginning of the session, hardly able to keep the government alive. All is paralysis. We are nearly brought to a stand. Every thing is suspended upon this one topic, this one idea, as if there were no object in government, no uses in government, no duties of those who administer government, but to settle one question.

Well, Sir, the next inquiry is, What do Massachusetts and the North, the antislavery States, lose by this adjustment? I put the question to every gentleman here, and to every man in the country. They lose the application of what is called the Wilmot Proviso to these Territories, and that is all. There is nothing else that I suppose the whole North are not willing to do, or willing to have done. They wish to get California into the Union and quiet New Mexico; they wish to terminate the dispute about the Texan boundary, cost what it reasonably may. They make no sacrifice in all these. What they sacrifice is this: the application of the Wilmot Proviso to the Territories of New Mexico and Utah; and that is all. Now, what is the importance of that loss, or that sacrifice, in any reasonable man's estimate? Its importance, Sir, depends upon its necessity. If, in any reasonable man's judgment, the necessity of the application of that proviso to New Mexico is apparent, why then it is important to those who hold that the further extension of slavery is to be resisted, as a matter of principle. But if it be not necessary, if circumstances do not call for it, why, then there is no sacrifice made in refusing or declining to apply the Wilmot Proviso.

Now, Sir, allow me to say, that the Wilmot Proviso is no matter of principle; it is a means to an end; and it cannot be raised to the dignity of a principle. The principle of the North I take to be, that there shall be no further extension of slave territory. Let that be admitted; what then? It does not necessarily follow that in every case you must apply the Wilmot Proviso. If there are other circumstances that are imperative and conclusive, and such as influence and control the judgment of reasonable men, rendering it unnecessary, for the establishment of that principle, to apply a measure which is obnoxious and disagreeable to others, and regarded by them as derogatory to their equality as members of the Union, then, I say, it is neither right, nor patriotic, nor just to apply it.

My honorable colleague admitted the other day, with great propriety and frankness, that if it were certain, or if it could be made certain, that natural causes necessarily exclude slavery from New Mexico, then the restriction ought not to be inserted in the bill. Now, by certainty I suppose my colleague meant not mathematical certainty; I suppose he meant that high probability, that moral certainty, which governs men in all the concerns of life. Our duties to society, our pursuits in life, are all measured by that high probability which is something short of mathematical certainty, but which we are bound to act upon in every daily transaction, either in a public or in a private capacity. The question, therefore, (I address myself to gentlemen of the North,) is this: Is the probability of the exclusion of slavery from New Mexico by natural causes so high, and strong, and conclusive, as that we should act upon it as we act on the same degree of probability applied to other questions, in civil, moral, and social relations? I shall not recur to what I have myself said, heretofore, on this subject; for I suppose my friend from Pennsylvania,* and my friend from Connecticut,† who discussed this matter latterly, have left it proved, and as much demonstrated as any problem of a moral and political character can be demonstrated, that New Mexico is not a country in which slavery exists, or into which it can ever be introduced. If that were not so upon previous evidence, and if now any thing further need be added, we have before us to-day an authentic expression of the will of the inhabitants of that country themselves, who, it is agreed on all hands, have the ultimate right of decision on a subject that concerns themselves alone, and that expression is against slavery.

What is it, then, that is yielded by the North but a mere abstraction, a naked possibility, upon which no man would act? No man would venture a farthing to-day for a great inheritance to be bestowed on him when slavery should be established in New Mexico. Now that there is an authentic declaration upon the subject by the people of New Mexico themselves, what is there that should lead us to hesitate in settling this matter? Why should we proceed upon the ground of adhering to the Wilmot Proviso as an abstract notion? And I must

* Mr. Cooper. † Mr. Smith.

be permitted to say, that, as applied to this case, it is all an abstraction. I do not mean to say that the injunction against slavery in the Ordinance of 1787 was a mere abstraction; on the contrary, it had its uses; but I say the application of that rule to this case is a mere abstraction, and nothing else. It does not affect the state of things in the slightest degree, present or future. Every thing is to be now, and remain hereafter, with or without that restriction, just as it would the other way. It is, therefore, in my judgment, clearly an abstraction.

I am sorry, Sir, very sorry, that my friend from Connecticut,* who has studied this case a great deal more than I have, not only as a member of this body, but while he was a member of the other house, and has demonstrated, beyond the power of any conscientious man's denial, that there can be no slavery in the Territory about which we are speaking, that the South is mistaken in supposing it possible to derive any benefit from it, and that the North is mistaken in supposing that that which they desire to prohibit will ever need any prohibition there; I am sorry to see that my very able friend, having demonstrated the case, did not carry out his own demonstration. The expression of his purpose to vote against this bill followed one of the clearest and strongest demonstrations in its favor that I have heard from the mouth of man. What is the reason of his opposition? Why, the gentleman said he was instructed by the legislature of Connecticut to oppose it; and, on the whole, he did not feel it to be his duty to depart from those instructions.

It has become, Sir, an object of considerable importance in the history of this government, to inquire how far instructions, given *ex parte* and under one state of circumstances, are to govern those who are to act under another state of circumstances, and not upon an *ex parte* hearing, but upon a hearing of the whole matter. The proposition, that a member of this government, in giving a vote to bind all the country, is to take as his instructions the will of a small part of the country, whether in his own State or out of it, is a proposition that is above or below all argument. Where men are sworn to act conscientiously for the good of the whole, according to their own best judgment

* Mr. Smith.

and opinion, if the proposition is asserted that they are, nevertheless, bound to take the individual opinion of a few, and be exclusively bound by that opinion, there is no room for argument; every man's moral perception, without argument, decides on such a proposition. I know, Sir, that, in a popular government like ours, instructions of this sort will be given, and pledges required. It is in the nature of the case. Political men in this country love the people; they love popular applause and promotion, and they are willing to make promises; and, as in other sorts of love, so in this, when the blood burns, the soul prodigally lends the tongue vows. It is especially the case in some States, in which, in electioneering contests, instructions become little constitutions, which men vow to support. These instructions are often given under circumstances very remote from those that exist when the duty comes to be performed; and, I am sorry to say, they are often given on collateral considerations. I will not say when or where, how remotely or how lately; but I am very much inclined to think that we should find, in the history of the country, cases in which instructions are ready to be given, or ready to be withheld, as the support of some little fragment of some sectional party may be, or may not be, obtained thereby.

Sir, it is curious enough to observe how differently this idea, that a member chosen into a public body, to act for the whole country, is bound, nevertheless, by the instructions of those who elected him, which has risen to a sort of rule in some of the American States, is received and treated elsewhere. According to our notions and habits of thinking, it is not only allowable for, but incumbent upon, a member of Congress, to follow the instructions given by his own particular constituents, although his vote affects the interest, the honor, the welfare, the renown, of twenty millions of people. As an instance, Sir, of the various views taken of this subject, as a question of morals, I may refer to what happened in the Chamber of Deputies of France some years ago, perhaps while the honorable member from Michigan* was residing in Paris, but more probably shortly after his return. A gentleman, who was a candidate for the Chamber of Deputies, promised his constituents that on a cer-

* Mr. Cass.

tain measure, expected to come before the Chamber, he would vote as they required. They required him to vote so and so, and he said he would do it. Well, Sir, he was chosen; and when he came to the Chamber to take the oath of office, he was told, Not so fast! Objection was made. The Chamber said he did not come there as a fair man; he did not come as an impartial man, to judge of the interests of the whole country upon the great questions that were to come before the Chamber. He was pledged and trammelled; he had given up his conscience and promised his vote, and therefore did not stand on an equality with other members of that assembly who came unpledged and untrammelled, and bound to exercise their own best judgments. In short, they rejected him; and whoever wishes to see the most beautiful disquisition upon political morals, and the duty of those who represent the people, that I know of since the time of Mr. Burke's speech at Bristol, can be gratified by reading M. Guizot's speech on that occasion. The member came under pledges made to a few to give his vote for them, although it might be against the many, and they held him not to be a worthy representative of France, fit to act on the questions which concerned the interests of the whole kingdom.

I know, Sir, how easily we glide into this habit of following instructions; although I know, also, that members of Congress wish to act conscientiously always, and I believe they wish themselves free from these trammels. But the truth is, that under the doctrine of instructions Congress is not free. To the extent to which this doctrine may at any time prevail in it, the two houses are not deliberative bodies. Congress needs a "Wilmot Proviso," much more than the snow-capped mountains of New Mexico or the salt plains of Utah. If the genius of American liberty, or some angel from a higher sphere, could fly over the land with a scroll bearing words, and with power to give effect to those words, and those words should be, "Be it ordained that neither in the Senate nor in the House of Representatives in Congress assembled shall there be slavery or involuntary servitude, except for crime," it would be a glorious crowning honor to the Constitution of the United States. O thou spirit of Nathan Dane! How couldst thou take so much pains to set men's limbs free in the Territories, and never deign

to add even a proviso in favor of the freedom of opinion and conscience in the halls of Congress!

Sir, I am of opinion that every public consideration connected with the interests of the State, one of whose representatives, and the most humble of them all, I am, shows the absolute necessity of settling this question at once, upon fair and reasonable terms; the necessity of judging subjects according to their real merit and importance, and acting accordingly; and that we should not be carried away by fancies of gorgons, hydras, and chimeras dire, to the utter disregard of all that is substantially valuable, important, and essential in the administration of the government. Massachusetts, one of the smallest of the States of the Union, circumscribed within the limits of eight thousand square miles of barren, rocky, and sterile territory, possesses within its limits at this moment nearly a million of people. With the same ratio of population, New York would contain nearly six million people, and Virginia more than seven million. What are the occupations and pursuits of such a population on so small a territory? A very small portion of them live by the tillage of the land. They are engaged in those pursuits which fall under the control, protection, and regulation of the laws of this government. These pursuits are commerce, navigation, the fisheries, and manufactures, every one of which is under the influence of the operation of acts of Congress every day. On none of these subjects does Congress ever pass a law that does not materially affect the happiness, industry, and prosperity of Massachusetts; yes, and of Rhode Island too [looking at the Rhode Island Senators]. Is it not, then, of great importance to all these interests that the government should be carried on regularly? that it should have the power of action, of motion, and legislation? Is it not the greatest calamity, that it should be all paralyzed, hung up, dependent upon one idea, as if there was no object in government, no use in government, no desirable protection from government, and no desirable legislation by government, except what relates to the single topic of slavery?

I cannot conceive that these great interests would be readily surrendered by the business men of the country, the laboring community of the Northern States, to abstractions, to naked possibilities, to idle fears that evils may ensue if a particular

abstract measure be not passed. Men must live; to live, they must work. And how is this to be done, if in this way all the business of society is stopped, and every thing is placed in a state of stagnation, and no man can even conjecture when the ordinary march of affairs is to be resumed. Depend upon it, the people of the North wish to see an end put to this state of things. They desire to see a measure of conciliation pass, and to have harmony restored; to be again in the enjoyment of a good government, under the protection and action of good laws; and that their interrupted labors may be profitably resumed, that their daily employment may return, that their daily means of subsistence and education for themselves and their families may be provided. There has not been, in my acquaintance with the people of this country, a moment in which so much alarm has been experienced, so much sinking of the heart felt, at the state of public affairs, in a time of peace, as now. I leave it to others to judge for themselves, who may better know public opinion; but, for my part, I believe it is the conviction of five sixths of the whole North, that questions such as have occupied us here should not be allowed any longer to embarrass the government, and defeat the just hopes of those who support it, and expect to live under its protection and care.

I have alluded to the argument of my friend from Connecticut, because it is the ablest argument on this subject that I have heard; and I have alluded to his intimated vote as illustrating what I consider the evil of instructing men, before a case arises, as to what shall be their conduct upon that case. The honorable member from Connecticut is as independent as any other man, and of course will not understand me to mean any thing personal in what I have said. I take his case merely as an illustration of the folly and absurdity of instructions. Why should a man of his strength of intellect, and while acting for the whole country, be controlled in his judgment by instructions given by others, with little knowledge of the circumstances, and no view of the whole case?

I have now, Mr. President, said what I think the North may gain, and what it may lose. Now let us inquire how it is with the South. In the first place, I think that the South, if all these measures pass, will gain an acceptable and satisfactory mode for the reclamation of fugitive slaves. As to the territorial ac-

quisitions, I am bound in candor to say, taking Maryland as an example, for instance, that Maryland will gain just what Massachusetts loses, and that is nothing at all; because I have not the slightest idea that, by any thing we can do here, any provision could be made by which the territory of New Mexico and Utah could become susceptible of slave labor, and so useful to the South. Now, let me say, Mr. President, with great respect and kindness, that I wish Southern gentlemen should consider this matter calmly and deliberately. There are none in this chamber, certainly, who desire the dissolution of this Union, nor in the other house of Congress. But all the world out of doors is not as wise and patriotic as gentlemen within these walls. I am quite aware that there are those who raise the loudest clamor against the Wilmot Proviso, and other restrictions upon slavery, that would be exceedingly gratified, nevertheless, to have that restriction imposed. I believe there are those scattered all along from here to the Gulf of Mexico who would say, "Let them put on further restrictions; let them push the South a little further, and then we shall know what we have to do." But, again, the Southern States gain what they think important and gratifying; that is, an exemption from a derogatory inequality. They find themselves placed where they wish to be placed, and, as far as the territories are concerned, relieved from what they consider the Wilmot yoke. This appeases a feeling of wounded pride; and they gain, too, the general restoration of peace and harmony in the progress of the government, in the beneficial operations of which they have a full share. One of the evils attendant upon this question is the harsh judgment passed by one portion of the Union upon another, founded, not on the conduct of the North or South generally, but on the conduct of particular persons or associations in each part respectively. Unjust charges are made by one against the other, and these are retaliated by those who are the objects of them. Accusations made by individuals in the North are attributed by the South to the whole North indiscriminately. On the other hand, extravagant individuals at the South utter objectionable sentiments; and these are bruited all over the North as Southern sentiments, and therefore the South is denounced. In the same way, sentiments springing from the Abolitionists of the North, which no man of character and sense approves, are

spread in the South; and the whole North are there charged with being Abolitionists, or tinctured with Abolitionism. Now, one side is just as fair and as true as the other. It is a prejudice of which both sides must rid themselves if they ever mean to come together as brethren, enjoying one renown, one destiny, and expecting one and the same destiny hereafter. If we mean to live together, common prudence should teach us to treat each other with respect.

The Nashville Address has been alluded to, and it has been charged upon the whole South, as a syllabus of Southern sentiments. Now, I do not believe a word of this. Far be it from me to impute to the South, generally, the sentiments of the Nashville Convention. That address is a studied disunion argument. It proceeds upon the ground that there must be a separation of the States, first, because the North acts so injuriously to the South that the South must secede; and, secondly, even if it were not so, and a better sense of duty should return to the North, still, such is the diversity of interest, that they cannot be kept together.

Mr. Barnwell (interposing). Will the honorable Senator refer to that portion of the address which contains the sentiment which he declares implies the desire for disunion in any event whatever; for that I understand is the charge against the address?

What I understand about this address is this. I say the argument of the address is, that the States cannot be kept together; because, first, the general disposition of the North is to invade the rights of the South, stating this in general language merely; and then, secondly, even if this were not so, and the North should get into a better temper in that respect, still no permanent peace could be expected, and no union long maintained, on account of the diversity of interests between the different portions of the Union. There is, according to the address, but one condition on which people can live together under the same government; and that is, when interests are entirely identical. An exact identity of interest, according to its notions, is the only security for good government.

Mr. Barnwell. With regard to the first part, the honorable Senator is correct, and I have no doubt at all that it is the character of the address, that, unless a great change be produced in the temper of the

Northern people, and the treatment which they give to us on account of our institutions, no permanent union between us can exist. With regard to the latter part, I contend that the address contains no such sentiment. It states distinctly that, in the position which the different portions of the Union occupy with regard to each other, with the want of that identity of interest between them, it is absolutely essential to the South that its sectional interests should be independent of the control of the North.

And what does that mean but separation?

Mr. Barnwell. Not at all. It means what I have always alleged, that the North has no right to interfere with the institution of slavery. If that interference is stopped, we do not contend that there is any necessity for a dissolution of the Union. But if it is persisted in, then the opinion of the address is, and I believe the opinion of a large portion of the Southern people is, that the Union cannot be made to endure.

It is hardly worth while, as the paper is not before us, for the honorable member from South Carolina and myself to enter into a discussion about this address. If I understand its argument, it is as I expressed it, that, even if the North were better behaved, there is a want of identity of interests between the North and the South which must soon break up the Union. As far as regards the gentleman's remark, that the North must abstain from any interference with the peculiar institutions of the South, why, every sensible man in the North thinks exactly so. I know that the sensible men of the North are of opinion, that the institution of slavery, as it exists in the States, was intended originally to be, has ever been, and now justly is, entirely out of the scope and reach of the legislation of this government; and this every body understands.

But I was saying that I can and shall impute no sentiment of disunion to the South, generally. Why, whom do I sit among? With whom have I been associated here for thirty years? With good Union men from the South. And in this chamber, and in late years, have there not been men from the South who have resisted every thing that threatened danger to the Union? Have there not been men here that, at some risk of losing favor with their constituents, have resisted the Mexican war, the acquisition of territory by arms, nay, men who played for the last stake, and, after the conquest was made, resisted the

ratification of the treaty by which these territories were brought under the control of this government? Sir, with these recollections, which do so much honor to the character of these gentlemen, and with these acts, which attest the entire loyalty of the great body of the South to the Union, I shall indulge in no general complaint against them; nor, so far as it comes within the power of my rebuke, will I tolerate it. They have the same interests, they are descended from the same Revolutionary blood, and believe the glory of the country to be as much theirs as ours; and I verily believe they desire to secure as perpetual an attachment to the North as the most intelligent men of the North do to perpetuate such an attachment to the South. I believe that the great masses of the people, both North and South, aside from the influence of agitation, are for the Union and for the Constitution; and God grant that they may remain so, and prevent every thing which may overturn either the one or the other!

I was sorry to hear, because I thought it was quite unjust, that all the folly and madness of the recent expedition to Cuba was chargeable upon the South, generally. The South had nothing more to do with it than Massachusetts, or the city of Boston, or the city of New York. It is unjust to say that such a violation of the law was perpetrated by the South, or found more apology or justification in the general Southern mind, than it found in New York or in Massachusetts.

Mr. Butler (in his seat). Not a bit more.

Now, the Senator from Connecticut told the truth the other day, and I am obliged to him for it. I do not mean that it is unusual for him, but I mean that it is a great deal more unusual, in the course of this debate, to hear the real truth spoken, than to hear ingenious sophisms and empty abstractions. But he told us the truth in respect to these territorial acquisitions; that it was not the North or the South that were the real authors of that conquest, but that it was the party who supported Mr. Polk for the Presidency, and who supported his measures while in the Presidency. The South, undoubtedly, as the party most in favor of the administration, took the lead; and that part of the North that upheld the administration followed, not as little Iulus followed his father, "*non passibus*

æquis," but with the same stride as its leaders. And therefore I was glad that my honorable friend from Connecticut, instead of giving us a normal, stereotyped speech against the South, told the truth of these transactions.

There are other topics, which I pass over. I said something formerly about the imprisonment of the black citizens of the North engaged in navigation, who go South, and are there arrested. That is a serious business, and we see that England has complained of it, as violating our treaty with her. I think it is an evil that ought to be redressed; for I never could see any necessity for it, and I am fully persuaded that other means can be taken to relieve the South from alarm without committing an outrage upon those who, at home, are considered as American citizens. At the same time, I am bound to say that I know nothing in the world to prevent any free citizen of Massachusetts, imprisoned under the laws of South Carolina, from trying the question of the constitutionality of that law, by applying at once to any judge of the United States for a writ of *habeas corpus*. I do not think, therefore, that there was any great necessity of making it a matter of public embassy. I think that was rather calculated to inflame feeling than to do good. But I must say, as I have said heretofore, that the gentleman who went from Massachusetts* was one of the most respectable men in the Commonwealth, bearing an excellent character, of excellent temper, and every way entitled to the regard of others to the extent to which he has enjoyed the regard of the people of Massachusetts.

Sir, I was in Boston some month or two ago, and, at a meeting of the people, said, that the public mind of Massachusetts, and the North, was laboring under certain prejudices, and that I would take an occasion, which I did not then enjoy, to state what I supposed these prejudices to be, and how they had arisen. I shall say a few words on the subject now. In the first place, I think that there is no prejudice on the part of the people of Massachusetts or of the North, arising out of any ill-will, or any want of patriotism or good feeling toward the whole country. It all originates in misinformation, false representation, and misapprehensions arising from the laborious

* Mr. Hoar.

efforts that have been made for the last twenty years to pervert the public judgment and irritate the public feeling.

The first of these misapprehensions is an exaggerated sense of the actual evil of the reclamation of fugitive slaves, felt by Massachusetts and the other New England States. What produced that sentiment? The cases do not exist. There has not been a case within the knowledge of this generation, in which a man has been taken back from Massachusetts into slavery by process of law, not one; and yet there are hundreds of people, who read nothing but Abolition newspapers, who suppose that these cases arise weekly; that, as a common thing, men, and sometimes their wives and children, are dragged back from the free soil of Massachusetts into slavery at the South.

Mr. Hale (interposing). Will the honorable Senator allow me to ask him a question? Is he not mistaken in the point of fact in regard to the State of Massachusetts? I recollect something occurring in Massachusetts, not more than three or four years ago, in relation to a man by the name of Pearson, and that there was a large public meeting on the subject in Faneuil Hall.

I will state how that was. That was a case of kidnapping by some one who claimed, or pretended to claim, the negro, and ran away with him by force. What I mean to say is, that there has been no man, under the Constitution and laws of the country, sent back from Massachusetts into slavery, this generation. I have stated before, and I state now, that cases of violent seizure or kidnapping have occurred, and they may occur in any State in the Union, under any provisions of law.

Now, Sir, this prejudice, created by the incessant action on the public mind of Abolition societies, Abolition presses, and Abolition lecturers, has grown very strong. No drum-head, in the longest day's march, was ever more incessantly beaten and smitten, than public sentiment in the North has been, every month, and day, and hour, by the din, and roll, and rub-a-dub of Abolition writers and Abolition lecturers. That it is which has created the prejudice.

Sir, the principle of the restitution of runaway slaves is not objectionable, unless the Constitution is objectionable. If the Constitution is right in that respect, the principle is right, and the law providing for carrying it into effect is right. If that be

so, and if there be no abuse of the right under any law of Congress, or any other law, then what is there to complain of?

I not only say, Sir, that there has been no case, so far as I can learn, of the reclamation of a slave by his master, which ended in taking him back to slavery, this generation, but I will add, that, so far as I have been able to go back in my researches, so far as I have been able to hear and learn in that part of the country, there has been no one case of false claim. Who knows in all New England of a single case of false claim having ever been set up to an alleged fugitive from slavery? It may possibly have happened; but I have never known it nor heard of it, although I have made diligent inquiry; nor do I believe there is the slightest danger of it, for all the community are alive to, and would take instant alarm at, any appearance of such a case, and especially at this time. There is no danger of any such violence being perpetrated.

Before I pass from this subject, Sir, I will say that what seems extraordinary is, that this principle of restitution, which has existed in the country for more than two hundred years without complaint, sometimes as a matter of agreement between the North and the South, and sometimes as a matter of comity, should all at once, and after the length of time I have mentioned, become a subject of excitement. I have in my hand a letter from Governor Berkeley, of Virginia, to Governor Winthrop, of Massachusetts, written in the year 1644, more than two hundred years ago, in which he says that a certain gentleman, naming him, had lost some servants, giving their names, whom he supposes to have fled into the jurisdiction of Massachusetts; and the member from Kentucky * will be pleased to learn that it contains a precedent for what he considers to be the proper course of proceeding in such cases. Governor Berkeley states that the gentleman, the owner of the slaves, has made it appear in court that they are his slaves and have run away. He goes on to say, "We expect you to use all kind offices for the restoration to their master of these fugitives, as we constantly exercise the same offices in restoring runaways to you." At that day I do not suppose there were a great many slaves in Massachusetts; but there was an extensive system of

* Mr. Clay.

apprenticeship, and hundreds of persons were bound apprentices in Massachusetts, some of whom would run away. They were as likely to run to Virginia as anywhere else; and in such cases they were returned, upon demand, to their masters. Indeed, it was found necessary in the early laws of Massachusetts to make provision for the seizure and return of runaway apprentices. In all the revisions of our laws, this provision remains; and it is in the Revised Statutes now before me. It provides that runaway apprentices shall be secured upon the application of their masters, or any one on their behalf, and put into jail until they can be sent for by them; and there is no trial by jury in the case, either. I say, therefore, that the exaggerated statement of the danger and mischief arising from this right of reclaiming slaves is a prejudice, produced by the causes I have stated, and one which ought not longer to haunt and terrify the public mind.

With great respect for those who differ from me, I will also state, that I think it is a prejudice to insist with so much earnestness upon the application of the Wilmot Proviso to these Territories of New Mexico and Utah, because of its obvious inapplicability, and the want of all reasonable necessity for making that application in the manner proposed, and as it is deemed offensive and affronting to the South.

Another prejudice against the South is just exactly that which exists in the South against the North, and consists in imputing to a whole portion of the country the extravagances of individuals. I will say only, before I depart from this part of the case, that the State in whose representation I bear a part is a Union State, thoroughly and emphatically; that she is attached to the Union and the Constitution by indissoluble ties; that she connects all her own history from colonial times, her struggle for independence, her efforts for the establishment of this government, and all the benefits and blessings which she has enjoyed under it, in one great attractive whole, to which her affections are constantly and powerfully drawn. All these make up a history in which she has taken a part, and the whole of which she enjoys as a most precious inheritance. She is a State for the Union; she will be for the Union. It is the law of her destiny; it is the law of her situation; it is a law imposed upon her by the recollections of the past, and by every interest for the present and every hope for the future.

Mr. President, it has always seemed to me to be a grateful reflection, that, however short and transient may be the lives of individuals, states may be permanent. The great corporations that embrace the government of mankind, protect their liberties, and secure their happiness, may have something of perpetuity, and, as I might say, of earthly immortality. For my part, Sir, I gratify myself by contemplating what in the future will be the condition of that generous State, which has done me the honor to keep me in the counsels of the country for so many years. I see nothing about her in prospect less than that which encircles her now. I feel that when I, and all those that now hear me, shall have gone to our last home, and afterwards, when mould may have gathered upon our memories, as it will have done upon our tombs, that State, so early to take her part in the great contest of the Revolution, will stand, as she has stood and now stands, like that column which, near her Capitol, perpetuates the memory of the first great battle of the Revolution, firm, erect, and immovable. I believe, Sir, that, if commotion shall shake the country, there will be one rock for ever, as solid as the granite of her hills, for the Union to repose upon. I believe that, if disasters arise, bringing clouds which shall obscure the ensign now over her and over us, there will be one star that will but burn the brighter amid the darkness of that night; and I believe that, if in the remotest ages (I trust they will be infinitely remote) an occasion shall occur when the sternest duties of patriotism are demanded and to be performed, Massachusetts will imitate her own example; and that, as at the breaking out of the Revolution she was the first to offer the outpouring of her blood and her treasure in the struggle for liberty, so she will be hereafter ready, when the emergency arises, to repeat and renew that offer, with a thousand times as many warm hearts, and a thousand times as many strong hands.

And now, Mr. President, to return at last to the principal and important question before us, What are we to do? How are we to bring this emergent and pressing question to an issue and an end? Here have we been seven and a half months, disputing about points which, in my judgment, are of no practical importance to one or the other part of the country. Are we to dwell for ever upon a single topic, a single idea? Are we to forget all the purposes for which governments are instituted, and

continue everlastingly to dispute about that which is of no essential consequence? I think, Sir, the country calls upon us loudly and imperatively to settle this question. I think that the whole world is looking to see whether this great popular government can get through such a crisis. We are the observed of all observers. It is not to be disputed or doubted, that the eyes of all Christendom are upon us. We have stood through many trials. Can we not stand through this, which takes so much the character of a sectional controversy? Can we stand that? There is no inquiring man in all Europe who does not ask himself that question every day, when he reads the intelligence of the morning. Can this country, with one set of interests at the South, and another set of interests at the North, and these interests supposed, but falsely supposed, to be at variance; can this people see what is so evident to the whole world beside, that this Union is their main hope and greatest benefit, and that their interests in every part are entirely compatible? Can they see, and will they feel, that their prosperity, their respectability among the nations of the earth, and their happiness at home, depend upon the maintenance of their Union and their Constitution? That is the question. I agree that local divisions are apt to warp the understandings of men, and to excite a belligerent feeling between section and section. It is natural, in times of irritation, for one part of the country to say, If you do that, I will do this, and so get up a feeling of hostility and defiance. Then comes belligerent legislation, and then an appeal to arms. The question is, whether we have the true patriotism, the Americanism, necessary to carry us through such a trial. The whole world is looking towards us with extreme anxiety. For myself, I propose, Sir, to abide by the principles and the purposes which I have avowed. I shall stand by the Union, and by all who stand by it. I shall do justice to the whole country, according to the best of my ability, in all I say, and act for the good of the whole country in all I do. I mean to stand upon the Constitution. I need no other platform. I shall know but one country. The ends I aim at shall be my country's, my God's, and Truth's. I was born an American; I will live an American; I shall die an American; and I intend to perform the duties incumbent upon me in that character to the end of my career. I mean to do this, with absolute disre-

gard of personal consequences. What are personal consequences? What is the individual man, with all the good or evil that may betide him, in comparison with the good or evil which may befall a great country in a crisis like this, and in the midst of great transactions which concern that country's fate? Let the consequences be what they will, I am careless. No man can suffer too much, and no man can fall too soon, if he suffer or if he fall in defence of the liberties and Constitution of his country.

Legal Arguments and Speeches to the Jury

Defence of the Kennistons*

Introductory Note†

THE trial of Levi and Laban Kenniston for highway robbery on the person of Major Elijah Putnam Goodridge, in Newbury, in the county of Essex, on the 19th of December, 1816, was one of the most remarkable trials ever had in Massachusetts. It was remarkable not so much for the dramatic character of its incidents, as for the unwearied pertinacity of the principal actor in the grossest falsehood and perjury. It was a trial awful in its instructions, and painfully interesting in the mystery which still hangs like a shroud around the motives of Mr. Goodridge.

A brief statement of the facts will fully exhibit the remarkable power of Mr. Webster in unmasking the hypocrisy which, for a long time, not only imposed upon the whole community, but misled by its subtlety the entire body of the Essex Bar.

Major Goodridge was a young man of good education and respectable connections; of fine personal appearance, gentlemanly deportment, and good character. His place of business was Bangor, Maine, and at the time of the alleged robbery he was on his way to Boston, travelling in a one-horse sleigh, alone, with a considerable sum of money. Before leaving home he procured a pair of pistols, which he discharged and loaded daily, as he said, in some unfrequented piece of woods, for he did not wish it to be known that he was armed. He said, moreover, that he took the precaution to put a private mark upon every piece of money in his possession, so as to be able to identify it if he should be robbed. His somewhat singular reason for these preliminary measures was, that he had heard of a robbery in Maine, not long before.

* An Argument addressed to the Jury, at the Term of the Supreme Judicial Court of Massachusetts held at Ipswich in April, 1817.

† The following account of this celebrated case was furnished by Stephen W. Marston, Esq., of Newburyport, who, together with Samuel L. Knapp, Esq., of the same place, was associated with Mr. Webster in the defence of the Kennistons.

When he arrived at Exeter, New Hampshire, he procured nine balls and then, for the first time, made no secret of having pistols. At this place he left his sleigh, obtained a saddle, and started for Newburyport on horseback, late in the afternoon of the 19th of December, passing the Essex Merrimack Bridge a few minutes before nine o'clock. On the brow of the hill, a short distance from the bridge, is the place of the robbery, in full view of several houses, on a great thoroughfare, where people are constantly passing, and where the mail-coach and two wagons were known to have passed within a few minutes of the time of the alleged robbery.

The Major's story was as follows. Three men suddenly appeared before him, one of whom seized the bridle of his horse, presented a pistol, and demanded his money. The Major, pretending to be getting his money, seized a pistol from his portmanteau with his right hand, grasped the ruffian at his horse's head with his left, and both discharged their pistols at the same instant, the ball of his adversary passing through the Major's hand. The three robbers then pulled him from his horse, dragged him over the frozen ground and over the fence, beating him till he was senseless, and robbed him of about seventeen hundred dollars in gold and paper money, and left him with his gold watch and all his papers in the field. Recovering in about half an hour, he went back to the bridge, passed several houses without calling, and, at the toll-house, accused the first person he met with, a female, of robbing him; and so continued charging various people about him with the robbery. After some time a lantern was procured, and himself with others started for the place of the robbery, where were found his watch, papers, penknife, and other articles. He represented to them that the robbers had bruised his head, stamped upon his breast, and stabbed him in several places. Physicians were called, and he appeared to be insane. The next day he went to Newburyport, and was confined to his bed for several weeks. A reward of three hundred dollars, soon increased by voluntary subscription to one thousand, was offered for the detection of the robbers and the recovery of the money. As soon as the Major was able to leave his bed, he went to Danvers, consulted his friends there, and the result of his deliberations and inquiries was the arrest of the Kennistons, who were found in an obscure part of the town of Newmarket, New Hampshire, their place of residence. In their house the Major found some pieces of his marked gold, deposited under a pork-barrel in the cellar; he also found there a ten-dollar note, which he identified as his own.

This was proof indeed of the fact of the robbery, which seemed for a time effectually fastened upon the Kennistons. But one circumstance after another came to light in regard to the transaction, until some people felt doubts creeping over their minds as to the truthfulness of the

Major's story. These were few in number, it is true, but such an intimation, coming from any respectable source, was enough to startle the Major and his friends from their apathy, and incited them to renewed efforts to probe this dark and mysterious transaction to its depths. The result was a determination to search the house of Mr. Pearson, the toll-gatherer at the bridge; but here nothing was found. They then procured the services of an old conjurer of Danvers, Swimmington by name, and under his direction, with witch-hazel and metallic rods, renewed their search upon Mr. Pearson's premises, this time discovering the Major's gold and paper wrappers. Mr. Pearson was arrested, carried to Newburyport, examined before two magistrates, and discharged at once. This operation proved most unpropitious to the Major's plans. So great was the indignation of Mr. Pearson's friends, for he was a respectable man, that they lost all control over themselves, and after the examination, detaching the horses from his sleigh, they drew him home themselves.

It now became more necessary than ever that some one should be found who might be connected with the Kennistons in the robbery, for the circumstances in relation to these men were such, that the public could not believe that they had committed the daring deed, though the evidence was incontestable that they had received a portion of the spoils. The next step, therefore, was to arrest one Taber of Boston, who had formerly lived in Portland, and whom Goodridge said he had seen in Alfred on his way up, and from whom he pretended to have obtained information in regard to the Kennistons. In Taber's house were found a number of the marked wrappers which the Major had put round his gold before leaving home. Taber was likewise brought to Newburyport, examined, and bound over for trial with the Kennistons.

Notwithstanding all this accumulation of evidence, the public were not satisfied. It seemed to be necessary that somebody living near the bridge should be connected with the transaction, and Mr. Joseph Jackman was fastened upon as that unfortunate man, he having left Newbury for New York very soon after the alleged robbery. Thither Goodridge immediately proceeded, found Jackman, who was living there with his brother, searched the house, and in the garret, among some old rubbish, found a large number of his marked wrappers! The Major's touch was magical, and underneath his fingers gold and bank-notes grew in plenty. Jackman was arrested and lodged in "the Tombs," while Goodridge returned to Boston, got a requisition from the Governor, and had him brought in irons to Ipswich, where the Supreme Judicial Court was then in session. The grand jury had risen, but he was examined before a magistrate, and ordered to recognize to appear at the next term; which he did, and was discharged. An indictment had been found

against the Kennistons and Taber, and the time of trial had arrived. Nothwithstanding the doubts and suspicions which had been excited by the conduct of Goodridge, yet the evidence against the Kennistons, Taber, and Jackman was so overwhelming, that almost every one felt sure of their conviction. To such an extent did this opinion prevail, that no eminent member of the Essex Bar was willing to undertake their defence. Under these circumstances, two or three individuals, who had been early convinced that the Major's stories were false from beginning to end, determined, the day before the trial, to send to Suffolk for counsel. Mr. Webster had just then removed to Boston from Portsmouth; his services were engaged, and late in the night preceding the day of trial he arrived at Ipswich, having had no opportunity to examine the witnesses, and but little time for consultation. The indictment against Taber was *nol prossed*, and the trial of the Kennistons commenced. Mr. Webster, as senior counsel, conducted the defence with a degree of ability, boldness, tact, and legal learning which had rarely been witnessed in Essex County, and, notwithstanding the accumulated mass of evidence against the Kennistons, they were acquitted.

At the next term of the Supreme Judicial Court, Jackman was indicted and tried, but the jury did not agree, though the Hon. William Prescott had been employed to assist the prosecuting officer. Jackman was again tried at the next term of the court, at this time defended by Mr. Webster, and acquitted.

The criminal prosecutions growing out of this affair being thus ended, Mr. Pearson commenced an action against Goodridge for malicious prosecution, laying his damages at $2,000, which sum the jury awarded him without leaving their seats. In this case, also, Mr. Webster was counsel for the plaintiff; and time had brought forth so many new facts, and the evidence was so clear and overwhelming against Goodridge, that the public became satisfied that *he was his own robber!* He was surrendered by his bail, committed to jail, took the poor debtors' oath, and soon after left the Commonwealth, and has not resided here since. It is understood that he finally settled in Norfolk, Virginia, where he still lives. The public rarely stop to consider how much they are indebted to men like Mr. Webster for laying bare the villany of such a deep-laid and diabolical plot. But for him there is no doubt the Kennistons and Jackman would have been convicted of highway robbery, though innocent.

The following report of Mr. Webster's speech is quite imperfect; a mere skeleton, affording but a very inadequate idea of the argument which was actually addressed by him to the jury.

Gentlemen of the Jury, — It is true that the offence charged in the indictment in this case is not capital; but perhaps this can hardly be considered as favorable to the defendants. To those who are guilty, and without hope of escape, no doubt the lightness of the penalty of transgression gives consolation. But if the defendants are innocent, it is more natural for them to be thinking upon what they have lost by that alteration of the law which has left highway robbery no longer capital, than upon what the guilty might gain by it. They have lost those great privileges in their trial, which the law allows, in capital cases, for the protection of innocence against unfounded accusation. They have lost the right of being previously furnished with a copy of the indictment, and a list of the government witnesses. They have lost the right of peremptory challenge; and, notwithstanding the prejudices which they know have been excited against them, they must show legal cause of challenge, in each individual case, or else take the jury as they find it. They have lost the benefit of assignment of counsel by the court. They have lost the benefit of the Commonwealth's process to bring in witnesses in their behalf. When to these circumstances it is added that they are strangers, almost wholly without friends, and without the means for preparing their defence, it is evident they must take their trial under great disadvantages.

But without dwelling on these considerations, I proceed, Gentlemen of the Jury, to ask your attention to those circumstances which cannot but cast doubts on the story of the prosecutor.

In the first place, it is impossible to believe that a robbery of this sort could have been committed by three or four men without previous arrangement and concert, and of course without the knowledge of the fact that Goodridge would be there, and that he had money. They did not go on the highway, in such a place, in a cold December's night, for the general purpose of attacking the first passenger, running the chance of his being somebody who had money. It is not easy to believe that a gang of robbers existed, that they acted systematically, communicating intelligence to one another, and meeting and dispersing as occasion required, and that this gang had their head-quarters in such a place as Newburyport. No town is more distinguished for the general correctness of the habits of its citizens; and it is of such a size that every man in it may be known to all the rest.

The pursuits, occupations, and habits of every person within it are within the observation of his neighbors. A suspicious stranger would be instantly observed, and all his movements could be easily traced. This is not the place to be the general rendezvous of a gang of robbers. Offenders of this sort hang on the skirts of large towns. From the commission of their crimes they hasten into the crowd, and hide themselves in the populousness of great cities.

If it be wholly improbable that a gang existed in such a place for the purpose of general plunder, the next inquiry is, Is there any reason to think that there was a special or particular combination, for the single purpose of robbing the prosecutor? Now it is material to observe, that not only is there no evidence of any such combination, but also, that circumstances existed which render it next to impossible that the defendants could have been parties to such a combination, or even that they could have any knowledge of the existence of any such man as Goodridge, or that any person, with money, was expected to come from the eastward, and to be near Essex Bridge, at or about nine o'clock, the evening when the robbery is said to have been committed.

One of the defendants had been for some weeks in Newburyport, the other passed the bridge from New Hampshire at twelve o'clock on the 19th of December, 1816. At this time, Goodridge had not yet arrived at Exeter, twelve or fourteen miles from the bridge. How, then, could either of the defendants know that he was coming? Besides, he says that nobody, as far as he is aware, knew on the road that he had money, and nothing happened till he reached Exeter, according to his account, from which it might be conjectured that such was the case. Here, as he relates it, it became known that he had pistols; and he must wish you to infer that the plan to rob him was laid here, at Exeter, by some of the persons who inferred that he had money from his being armed. Who were these persons? Certainly not the defendants, or either of them. Certainly not Taber. Certainly not Jackman. Were they persons of suspicious characters? Was he in a house of a suspicious character? On this point he gives us no information. He has either not taken the pains to inquire, or he chooses not to communicate the result of his inquiries. Yet nothing could be more important, since he seems compelled

to lay the scene of the plot against him at Exeter, than to know who the persons were that he saw, or who saw him, at that place. On the face of the facts now proved, nothing could be more improbable than that the plan of robbery was concerted at Exeter. If so, why should those who concerted it send forward to Newburyport to engage the defendants, especially as they did not know that they were there? What should induce any persons so suddenly to apply to the defendants to assist in a robbery? There was nothing in their personal character or previous history that should induce this.

Nor was there time for all this. If the prosecutor had not lingered on the road, for reasons not yet discovered, he must have been in Newburyport long before the time at which he states the robbery to have been committed. How, then, could any one expect to leave Exeter, come to Newburyport, fifteen miles, there look out for and find out assistants for a highway robbery, and get back two miles to a convenient place for the commission of the crime? That any body should have undertaken to act thus is wholly improbable; and, in point of fact, there is not the least proof of any body's travelling, that afternoon, from Exeter to Newburyport, or of any person who was at the tavern at Exeter having left it that afternoon. In all probability, nothing of this sort could have taken place without being capable of detection and proof. In every particular, the prosecutor has wholly failed to show the least probability of a plan to rob him having been laid at Exeter.

But how comes it that Goodridge was near or quite four hours and a half in travelling a distance which might have been travelled in two hours or two hours and a half. He says he missed his way, and went the Salisbury road. But some of the jury know that this could not have delayed him more than five or ten minutes. He ought to be able to give some better account of this delay.

Failing, as he seems to do, to create any belief that a plan to rob him was arranged at Exeter, the prosecutor goes back to Alfred, and says he saw there a man whom Taber resembles. But Taber is proved to have been at that time, and at the time of the robbery, in Boston. This is proved beyond question. It is so certain, that the Solicitor-General has *nol prossed* the indictment against him.

There is an end, then, of all pretence of the adoption of a scheme of robbery at Alfred. This leaves the prosecutor altogether unable to point out any manner in which it should become known that he had money, or in which a design to rob him should originate.

It is next to be considered whether the prosecutor's story is either natural or consistent. But, on the threshold of the inquiry, every one puts the question, What motive had the prosecutor to be guilty of the abominable conduct of feigning a robbery? It is difficult to assign motives. The jury do not know enough of his character or circumstances. Such things have happened, and may happen again. Suppose he owed money in Boston, and had it not to pay? Who knows how high he might estimate the value of a plausible apology? Some men have also a whimsical ambition of distinction. There is no end to the variety of modes in which human vanity exhibits itself. A story of this nature excites the public sympathy. It attracts general attention. It causes the name of the prosecutor to be celebrated as a man who has been attacked, and, after a manly resistance, overcome by robbers, and who has renewed his resistance as soon as returning life and sensation enabled him, and, after a second conflict, has been quite subdued, beaten and bruised out of all sense and sensation, and finally left for dead on the field. It is not easy to say how far such motives, trifling and ridiculous as most men would think them, might influence the prosecutor, when connected with any expectation of favor or indulgence, if he wanted such, from his creditors. It is to be remembered that he probably did not see all the consequences of his conduct, if his robbery be a pretence. He might not intend to prosecute any body. But he probably found, and indeed there is evidence to show, that it was necessary for him to do something to find out the authors of the alleged robbery. He manifested no particular zeal on this subject. He was in no haste. He appears rather to have been pressed by others to do that which, if he had really been robbed, we should suppose he would have been most earnest to do, the earliest moment.

But could he so seriously wound himself? Could he or would he shoot a pistol-bullet through his hand, in order to render the robbery probable, and to obtain belief in his story? All exhibi-

tions are subject to accidents. Whether they are serious or farcical, they may, in some particulars, not proceed exactly as they are designed to do. If we knew that this shot through the hand, if made by himself, must have been intentionally made by himself, it would be a circumstance of greater weight. The bullet went through the sleeve of his coat. He might have intended it should go through nothing else. It is quite certain he did not receive the wound in the way he described. He says he was pulling or thrusting aside the robber's pistol, and while his hand was on it, it was fired, and the contents passed through his hand. This could not have been so, because no part of the contents went through the hand, except the ball. There was powder on the sleeve of his coat, and from the appearance one would think the pistol to have been three or four feet from the hand when fired. The fact of the pistol-bullet being fired through the hand, is doubtless a circumstance of importance. It may not be easy to account for it; but it is to be weighed with other circumstances.

It is most extraordinary, that, in the whole case, the prosecutor should prove hardly any fact in any way but by his own oath. He chooses to trust every thing on his own credit with the jury. Had he the money with him which he mentions? If so, his clerks or persons connected with him in business must have known it; yet no witness is produced. Nothing can be more important than to prove that he had the money. Yet he does not prove it. Why should he leave this essential fact without further support? He is not surprised with this defence, he knew what it would be. He knew that nothing could be more important than to prove that, in truth, he did possess the money which he says he lost; yet he does not prove it. All that he saw, and all that he did, and every thing that occurred to him until the alleged robbery, rests solely on his own credit. He does not see fit to corroborate any fact by the testimony of any witness. So he went to New York to arrest Jackman. He did arrest him. He swears positively that he found in his possession papers which he lost at the time of the robbery; yet he neither produces the papers themselves, nor the persons who assisted in the search.

In like manner, he represents his intercourse with Taber at Boston. Taber, he says, made certain confessions. They made

a bargain for a disclosure or confession on one side, and a reward on the other. But no one heard these confessions except Goodridge himself. Taber now confronts him, and pronounces this part of his story to be wholly false; and there is nobody who can support the prosecutor.

A jury cannot too seriously reflect on this part of the case. There are many most important allegations of fact, which, if true, could easily be shown by other witnesses, and yet are not so shown.

How came Mr. Goodridge to set out from Bangor, armed in this formal and formidable manner? How came he to be so apprehensive of a robbery? The reason he gives is completely ridiculous. As the foundation of his alarm, he tells a story of a robbery which he had heard of, but which, as far as appears, no one else ever heard of; and the story itself is so perfectly absurd, it is difficult to resist the belief that it was the product of his imagination at the moment. He seems to have been a little too confident that an attempt would be made to rob him. The manner in which he carried his money, as he says, indicated a strong expectation of this sort. His gold he wrapped in a cambric cloth, put it into a shot bag, and then into a portmanteau. One parcel of bills, of a hundred dollars in amount, he put into his pocket-book; another, of somewhat more than a thousand dollars, he carried next his person, underneath all his clothes. Having disposed of his money in this way, and armed himself with two good pistols, he set out from Bangor. The jury will judge whether this extraordinary care of his money, and this formal arming of himself to defend it, are not circumstances of a very suspicious character.

He stated that he did not travel in the night; that he would not so much expose himself to robbers. He said that, when he came near Alfred, he did not go into the village, but stopped a few miles short, because night was coming on, and he would not trust himself and his money out at night. He represents himself to have observed this rule constantly and invariably until he got to Exeter. Yet, when the time came for the robbery, he was found out at night. He left Exeter about sunset, intending to go to Newburyport, fifteen miles distant, that evening. When he is asked how this should happen, he says he had no fear of robbers after he left the District of Maine. He thought

himself quite safe when he arrived at Exeter. Yet he told the jury, that at Exeter he thought it necessary to load his pistol afresh. He asked for a private room at the inn. He told the persons in attendance that he wished such a room for the purpose of changing his clothes. He charged them not to suffer him to be interrupted. But he now testifies that his object was not to change his dress, but to put new loading into his pistols. What sort of a story is this?

He says he now felt himself out of all danger from robbers, and was therefore willing to travel at night. At the same time, he thought himself in very great danger from robbers, and therefore took the utmost pains to keep his pistols well loaded and in good order. To account for the pains he took about loading his pistols at Exeter, he says it was his invariable practice, every day after he left Bangor, to discharge and load again one or both of his pistols; that he never missed doing this; that he avoided doing it at the inns, lest he should create suspicion, but that he did it, while alone, on the road, every day.

How far this is probable the jury will judge. It will be observed that he gave up his habits of caution as he approached the place of the robbery. He then loaded his pistols at the tavern, where persons might and did see him; and he then also travelled in the night. He passed the bridge over Merrimack River a few minutes before nine o'clock. He was now at a part of his progress where he was within the observation of other witnesses, and something could be known of him besides what he told of himself. Immediately after him passed the two persons with their wagons, Shaw and Keyser. Close upon them followed the mail-coach. Now, these wagons and the mail must have passed within three rods, at most, of Goodridge, at the very time of the robbery. They must have been very near the spot, the very moment of the attack; and if he was under the robbers' hands as long as he represents, or if they staid on the spot long enough to do half what he says they did, they must have been there when the wagons and the stage passed. At any rate, it is next to impossible, by any computation of time, to put these carriages so far from the spot, that the drivers should not have heard the cry of murder, which he says he raised, or the report of the two pistols, which he says were discharged. In three quarters of an hour, or an hour, he returned, and repassed the bridge.

The jury will next naturally look to the appearances exhibited on the field after the robbery. The portmanteau was there. The witnesses say, that the straps which fastened it to the saddle had been neither cut nor broken. They were carefully unbuckled. This was very considerate for robbers. It had been opened, and its contents were scattered about the field. The pocket-book, too, had been opened, and many papers it contained found on the ground. Nothing valuable was lost but money. The robbers did not think it well to go off at once with the portmanteau and the pocket-book. The place was so secure, so remote, so unfrequented; they were so far from the highway, at least one full rod; there were so few persons passing, probably not more than four or five then in the road, within hearing of the pistols and the cries of Goodridge; there being, too, not above five or six dwelling-houses, full of people, within the hearing of the report of a pistol; these circumstances were all so favorable to their safety, that the robbers sat down to look over the prosecutor's papers, carefully examined the contents of his pocket-book and portmanteau, and took only the things which they needed! There was money belonging to other persons. The robbers did not take it. They found out it was not the prosecutor's, and left it. It may be said to be favorable to the prosecutor's story, that the money which did not belong to him, and the plunder of which would seem to be the most probable inducement he could have to feign a robbery, was not taken. But the jury will consider whether this circumstance does not bear quite as strongly the other way, and whether they can believe that robbers could have left this money, either from accident or design.

The robbers, by Goodridge's account, were extremely careful to search his person. Having found money in his portmanteau and in his pocket-book, they still forthwith stripped him to the skin, and searched until they found the sum which had been so carefully deposited under his clothes. Was it likely, that, having found money in the places where it is ordinarily carried, robbers should proceed to search for more, where they had no reason to suppose more would be found? Goodridge says that no person knew of his having put his bank-notes in that situation. On the first attack, however, they proceeded to open one garment after another, until they penetrated to the treasure, which was beneath them all.

The testimony of Mr. Howard is material. He examined Goodridge's pistol, which was found on the spot, and thinks it had not been fired at all. If this be so, it would follow that the wound through the hand was not made by this pistol; but then, as the pistol is now discharged, if it had not been fired, he is not correct in swearing that he fired it at the robbers, nor could it have been loaded at Exeter, as he testified.

In the whole case, there is nothing, perhaps, more deserving consideration, than the prosecutor's statement of the violence which the robbers used towards him. He says he was struck with a heavy club, on the back part of his head. He fell senseless to the ground. Three or four rough-handed villains then dragged him to the fence, and through it or over it, with such force as to break one of the boards. They then plundered his money. Presently he came to his senses; perceived his situation; saw one of the robbers sitting or standing near; he valiantly sprung upon, and would have overcome him, but the ruffian called out for his comrades, who returned, and all together they renewed their attack upon, subdued him, and redoubled their violence. They struck him heavy blows; they threw him violently to the ground; they kicked him in the side; they choked him; one of them, to use his own words, jumped upon his breast. They left him only when they supposed they had killed him. He went back to Pearson's, at the bridge, in a state of delirium, and it was several hours before his recollection came to him. This is his account. Now, in point of fact, it is certain that on no part of his person was there the least mark of this beating and wounding. The blow on the head, which brought him senseless to the ground, neither broke the skin, nor caused any tumor, nor left any mark whatever. He fell from his horse on the frozen ground, without any appearance of injury. He was drawn through or over the fence with such force as to break the rail, but not so as to leave any wound or scratch on him. A second time he is knocked down, kicked, stamped upon, choked, and in every way abused and beaten till sense had departed, and the breath of life hardly remained; and yet no wound, bruise, discoloration, or mark of injury was found to result from all this. Except the wound in his hand, and a few slight punctures in his left arm, apparently made with his own penknife, which was found open on the

spot, there was no wound or mark which the surgeons, upon repeated examinations, could anywhere discover. This is a story not to be believed. No matter who tells it, it is so impossible to be true, that all belief is set at defiance. No man can believe it. All this tale of blows which left no marks, and of wounds which could not be discovered, must be the work of imagination. If the jury can believe that he was robbed, it is impossible they can believe his account of the manner of it.

With respect, next, to delirium. The jury have heard the physicians. Two of them have no doubt it was all feigned. Dr. Spofford spoke in a more guarded manner, but it was very evident his opinion agreed with theirs. In the height of his raving, the physician who was present said to others, that he could find nothing the matter with the man, and that his pulse was perfectly regular. But consider the facts which Dr. Balch testifies. He suspected the whole of this illness and delirium to be feigned. He wished to ascertain the truth. While he or others were present, Goodridge appeared to be in the greatest pains and agony from his wounds. He could not turn himself in bed, nor be turned by others, without infinite distress. His mind, too, was as much disordered as his body. He was constantly raving about robbery and murder. At length the physicians and others withdrew, and left him alone in the room. Dr. Balch returned softly to the door, which he had left partly open, and there he had a full view of his patient, unobserved by him. Goodridge was then very quiet. His incoherent exclamations had ceased. Dr. Balch saw him turn over without inconvenience. Pretty soon he sat up in bed, and adjusted his neckcloth and his hair. Then, hearing footsteps on the staircase, he instantly sunk into the bed again; his pains all returned, and he cried out against robbers and murderers as loud as ever. Now, these facts are all sworn to by an intelligent witness, who cannot be mistaken in them; a respectable physician, whose veracity or accuracy is in no way impeached or questioned. After this, it is difficult to retain any good opinion of the prosecutor. Robbed or not robbed, this was his conduct; and such conduct necessarily takes away all claim to sympathy and respect. The jury will consider whether it does not also take away all right to be believed in any thing. For if they should be of opinion that in any one point he has inten-

tionally misrepresented facts, he can be believed in nothing. No man is to be convicted on the testimony of a witness whom the jury has found wilfully violating the truth in any particular.

The next part of the case is the conduct of the prosecutor in attempting to find out the robbers, after he had recovered from his illness. He suspected Mr. Pearson, a very honest, respectable man, who keeps the tavern at the bridge. He searched his house and premises. He sent for a conjurer to come, with his metallic rods and witch-hazel, to find the stolen money. Goodridge says now, that he thought he should find it, if the conjurer's instruments were properly prepared. He professes to have full faith in the art. Was this folly, or fraud, or a strange mixture of both? Pretty soon after the last search, gold pieces were actually found near Mr. Pearson's house, in the manner stated by the female witness. How came they there? Did the robber deposit them there? That is not possible. Did he accidentally leave them there? Why should not a robber take as good care of his money as others? It is certain, too, that the gold pieces were not put there at the time of the robbery, because the ground was then bare; but when these pieces were found, there were several inches of snow below them. When Goodridge searched here with his conjurer, he was on this spot, alone and unobserved, as he thought. Whether he did not, at that time, drop his gold into the snow, the jury will judge. When he came to this search, he proposed something very ridiculous. He proposed that all persons about to assist in the search should be examined, to see that they had nothing which they could put into Pearson's possession, for the purpose of being found there. But how was this examination to be made? Why, truly, Goodridge proposed that every man should examine himself, and that, among others, he would examine himself, till he was satisfied he had nothing in his pockets which he could leave at Pearson's, with the fraudulent design of being afterwards found there, as evidence against Pearson. What construction would be given to such conduct?

As to Jackman, Goodridge went to New York and arrested him. In his room he says he found paper coverings of gold, with his own figures on them, and pieces of an old and useless receipt, which he can identify, and which he had in his possession at the time of the robbery. He found these things lying

on the floor in Jackman's room. What should induce the robbers, when they left all other papers, to take this receipt? And what should induce Jackman to carry it to New York, and keep it, with the coverings of the gold, in a situation where it was likely to be found, and used as evidence against him?

There is no end to the series of improbabilities growing out of the prosecutor's story.

One thing especially deserves notice. Wherever Goodridge searches, he always finds something; and what he finds, he always can identify and swear to, as being his. The thing found has always some marks by which he knows it. Yet he never finds much. He never finds the mass of his lost treasure. He finds just enough to be evidence, and no more.

These are the circumstances which tend to raise doubts of the truth of the prosecutor's relation. It is for the jury to say, whether it would be safe to convict any man for this robbery until these doubts shall be cleared up. No doubt they are to judge him candidly; but they are not to make every thing yield to a regard to his reputation, or a desire to vindicate him from the suspicion of a fraudulent prosecution.

He stands like other witnesses, except that he is a very interested witness; and he must hope for credit, if at all, from the consistency and general probability of the facts to which he testifies. The jury will not convict the prisoners to save the prosecutor from disgrace. He has had every opportunity of making out his case. If any person in the State could have corroborated any part of his story, that person he could have produced. He has had the benefit of full time, and good counsel, and of the Commonwealth's process, to bring in his witnesses. More than all, he has had an opportunity of telling his own story, with the simplicity that belongs to truth, if it were true, and the frankness and earnestness of an honest man, if he be such. It is for the jury to say, under their oaths, how he has acquitted himself in these particulars, and whether he has left their minds free from doubt as to the truth of his narration.

But if Goodridge were really robbed, is there satisfactory evidence that the defendants had a hand in the commission of this offence? The evidence relied on is the finding of the money in their house. It appears that these defendants lived

together, and, with a sister, constituted one family. Their father lived in another part of the same house, and with his wife constituted another and distinct family. In this house, some six weeks after the robbery, the prosecutor made a search; and the result has been stated by the witnesses. Now, if the money had been passed or used by the defendants it might have been conclusive. If found about their persons, it might have been very strong proof. But, under the circumstances of this case, the mere finding of money in their house, and that only in places where the prosecutor had previously been, is no evidence at all. With respect to the gold pieces, it is certainly true that they were found in Goodridge's track. They were found only where he had been, and might have put them.

When the sheriff was in the house and Goodridge in the cellar, gold was found in the cellar. When the sheriff was up stairs and Goodridge in the rooms below, the sheriff was called down to look for money where Goodridge directed, and there money was found. As to the bank-note, the evidence is not quite so clear. Mr. Leavitt says he found a note in a drawer in a room in which none of the party had before been; that he thought it an uncurrent or counterfeit note, and not a part of Goodridge's money, and left it where he found it, without further notice. An hour or two afterward, Upton perceived a note in the same drawer, Goodridge being then with or near him, and called to Leavitt. Leavitt told him that he had discovered that note before, but that it could not be Goodridge's. It was then examined. Leavitt says he looked at it, and saw writing on the back of it. Upton says he looked at it, and saw writing on the back of it. He says also that it was shown to Goodridge, who examined it in the same way that he and Leavitt examined it. None of the party at this time suspected it to be Goodridge's. It was then put into Leavitt's pocket-book, where it remained till evening, when it was taken out at the tavern; and then it turns out to be, plainly and clearly, one of Goodridge's notes, and has the name of "James Poor, Bangor," in Goodridge's own handwriting, on the back of it. The first thing that strikes one in this account is, Why was not this discovery made at the time? Goodridge was looking for notes, as well as gold. He was looking for Boston notes, for such he had lost. He was looking for ten-dollar notes, for such he had lost. He was look-

ing for notes which he could recognize and identify. He would, therefore, naturally be particularly attentive to any writing or marks upon such as he might find. Under these circumstances, a note is found in the house of the supposed robbers. It is a Boston note, it is a ten-dollar note, it has writing on the back of it; that writing is the name of his town and the name of one of his neighbors; more than all, that writing is his own handwriting! Notwithstanding all this, neither Goodridge, nor Upton, nor the sheriff, examined it so as to see whether it was Goodridge's money. Notwithstanding it so fully resembled, in all points, the money they were looking for, and notwithstanding they also saw writing on the back of it, which, they must know, if they read it, would probably have shown where it came from, neither of them did so far examine it as to see any proof of its being Goodridge's.

This is hardly to be believed. It must be a pretty strong faith in the prosecutor that could credit this story. In every part of it, it is improbable and absurd. It is much more easy to believe that the note was changed. There might have been, and there probably was, an uncurrent or counterfeit note found in the drawer by Leavitt. He certainly did not at the time think it to be Goodridge's, and he left it in the drawer where he found it. Before he saw it again, the prosecutor had been in that room, and was in or near it when the sheriff was again called in, and asked to put that bill in his pocket-book. How do the jury know that this was the same note which Leavitt had before seen? Or suppose it was. Leavitt carried it to Coffin's; in the evening he produced it, and, after having been handed about for some time among the company, it turns out to be Goodridge's note, and to have upon it infallible marks of identity. How do the jury know that a sleight of hand had not changed the note at Coffin's? It is sufficient to say, the note might have been changed. It is not certain that this is the note which Leavitt first found in the drawer, and this not being certain, it is not proof against the defendants.

Is it not extremely improbable, if the defendants are guilty, that they should deposit the money in the places where it was found? Why should they put it in small parcels in so many places, for no end but to multiply the chances of detection? Why, especially, should they put a doubloon in their father's

pocket-book? There is no evidence, nor any ground of suspicion, that the father knew of the money being in his pocket-book. He swears he did not know it. His general character is unimpeached, and there is nothing against his credit. The inquiry at Stratham was calculated to elicit the truth; and, after all, there is not the slightest reason to suspect that he knew that the doubloon was in his pocket-book. What could possibly induce the defendants to place it there? No man can conjecture a reason. On the other hand, if this is a fraudulent proceeding on the part of the prosecutor, this circumstance could be explained. He did not know that the pocket-book, and the garment in which it was found, did not belong to one of the defendants. He was as likely, therefore, to place it there as elsewhere. It is very material to consider that nothing was found in that part of the house which belonged to the defendants. Every thing was discovered in the father's apartments. They were not found, therefore, in the possession of the defendants, any more than if they had been discovered in any other house in the neighborhood. The two tenements, it is true, were under the same roof; but they were not on that account the same tenements. They were as distinct as any other houses. Now, how should it happen that the several parcels of money should all be found in the father's possession? He is not suspected, certainly there is no reason to suspect him, of having had any hand either in the commission of the robbery or the concealing of the goods. He swears he had no knowledge of any part of this money being in his house. It is not easy to imagine how it came there, unless it be supposed to have been put there by some one who did not know what part of the house belonged to the defendants and what part did not.

The witnesses on the part of the prosecution have testified that the defendants, when arrested, manifested great agitation and alarm; paleness overspread their faces, and drops of sweat stood on their temples. This satisfied the witnesses of the defendants' guilt, and they now state the circumstances as being indubitable proof. This argument manifests, in those who use it, an equal want of sense and sensibility. It is precisely fitted to the feeling and the intellect of a bum-bailiff. In a court of justice it deserves nothing but contempt. Is there nothing that

can agitate the frame or excite the blood but the consciousness of guilt? If the defendants were innocent, would they not feel indignation at this unjust accusation? If they saw an attempt to produce false evidence against them, would they not be angry? And, seeing the production of such evidence, might they not feel fear and alarm? And have indignation, and anger, and terror, no power to affect the human countenance or the human frame?

Miserable, miserable, indeed, is the reasoning which would infer any man's guilt from his agitation when he found himself accused of a heinous offence; when he saw evidence which he might know to be false and fraudulent brought against him; when his house was filled, from the garret to the cellar, by those whom he might esteem as false witnesses; and when he himself, instead of being at liberty to observe their conduct and watch their motions, was a prisoner in close custody in his own house, with the fists of a catch-poll clenched upon his throat.

The defendants were at Newburyport the afternoon and evening of the robbery. For the greater part of the time they show where they were, and what they were doing. Their proof, it is true, does not apply to every moment. But when it is considered that, from the moment of their arrest, they have been in close prison, perhaps they have shown as much as could be expected. Few men, when called on afterwards, can remember, and fewer still can prove, how they have passed every half-hour of an evening. At a reasonable hour they both came to the house where Laban had lodged the night before. Nothing suspicious was observed in their manner or conversation. Is it probable they would thus come unconcernedly into the company of others, from a field of robbery, and, as they must have supposed, of murder, before they could have ascertained whether the stain of blood was not on their garments? They remained in the place a part of the next day. The town was alarmed; a strict inquiry was made of all strangers, and of the defendants among others. Nothing suspicious was discovered. They avoided no inquiry, nor did they leave the town in any haste. The jury has had an opportunity of seeing the defendants. Does their general appearance indicate that hardihood which would enable them to act this cool, unconcerned part? Is it not more likely they would have fled?

From the time of the robbery to the arrest, five or six weeks, the defendants were engaged in their usual occupations. They are not found to have passed a dollar of money to any body. They continued their ordinary habits of labor. No man saw money about them, nor any circumstance that might lead to a suspicion that they had money. Nothing occurred tending in any degree to excite suspicion against them. When arrested, and when all this array of evidence was brought against them, and when they could hope in nothing but their innocence, immunity was offered them again if they would confess. They were pressed, and urged, and allured, by every motive which could be set before them, to acknowledge their participation in the offence, and to bring out their accomplices. They steadily protested that they could confess nothing because they knew nothing. In defiance of all the discoveries made in their house, they have trusted to their innocence. On that, and on the candor and discernment of an enlightened jury, they still rely.

If the jury are satisfied that there is the highest improbability that these persons could have had any previous knowledge of Goodridge, or been concerned in any previous concert to rob him; if their conduct that evening and the next day was marked by no circumstances of suspicion; if from that moment until their arrest nothing appeared against them; if they neither passed money, nor are found to have had money; if the manner of the search of their house, and the circumstances attending it, excite strong suspicions of unfair and fraudulent practices; if, in the hour of their utmost peril, no promises of safety could draw from the defendants any confession affecting themselves or others, it will be for the jury to say whether they can pronounce them guilty.

The Dartmouth College Case*

THE action, The Trustees of Dartmouth College *vs.* William H. Woodward, was commenced in the Court of Common Pleas, Grafton County, State of New Hampshire, February term, 1817. The declaration was trover for the books of record, original charter, common seal, and other corporate property of the College. The conversion was alleged to have been made on the 7th day of October, 1816. The proper pleas were filed, and by consent the cause was carried directly to the Superior Court of New Hampshire, by appeal, and entered at the May term, 1817. The general issue was pleaded by the defendant, and joined by the plaintiffs. The facts in the case were then agreed upon by the parties, and drawn up in the form of a special verdict, reciting the charter of the College and the acts of the legislature of the State, passed June and December, 1816, by which the said corporation of Dartmouth College was *enlarged* and *improved*, and the said charter *amended*.

The question made in the case was, whether those acts of the legislature were valid and binding upon the corporation, without their acceptance or assent, and not repugnant to the Constitution of the United States. If so, the verdict found for the defendants; otherwise, it found for the plaintiffs.

The cause was continued to the September term of the court in Rockingham County, where it was argued; and at the November term of the same year, in Grafton County, the opinion of the court was delivered by Chief Justice Richardson, in favor of the validity and constitutionality of the acts of the legislature; and judgment was accordingly entered for the defendant on the special verdict.

Thereupon a writ of error was sued out by the original plaintiffs, to remove the cause to the Supreme Court of the United States; where it

* Argument before the Supreme Court of the United States, at Washington, on the 10th of March, 1818.

was entered at the term of the court holden at Washington on the first Monday of February, 1818.

The cause came on for argument on the 10th day of March, 1818, before all the judges. It was argued by Mr. Webster and Mr. Hopkinson for the plaintiffs in error, and by Mr. Holmes and the Attorney-General (Wirt) for the defendant in error.

At the term of the court holden in February, 1819, the opinion of the judges was delivered by Chief Justice Marshall, declaring the acts of the legislature unconstitutional and invalid, and reversing the judgment of the State court. The court, with the exception of Mr. Justice Duvall, were unanimous.

The following was the argument of Mr. Webster for the plaintiffs in error.

The general question is, whether the acts of the legislature of New Hampshire of the 27th of June, and of the 18th and 26th of December, 1816, are valid and binding on the plaintiffs, *without their acceptance or assent.*

The charter of 1769 created and established a corporation, to consist of twelve persons, and no more; to be called the "Trustees of Dartmouth College." The preamble to the charter recites, that it is granted on the application and request of the Rev. Eleazer Wheelock: That Dr. Wheelock, about the year 1754, established a charity school, at his own expense, and on his own estate and plantation: That for several years, through the assistance of well-disposed persons in America, granted at his solicitation, he had clothed, maintained, and educated a number of native Indians, and employed them afterwards as missionaries and schoolmasters among the savage tribes: That, his design promising to be useful, he had constituted the Rev. Mr. Whitaker to be his attorney, with power to solicit contributions, in England, for the further extension and carrying on of his undertaking; and that he had requested the Earl of Dartmouth, Baron Smith, Mr. Thornton, and other gentlemen, to receive such sums as might be contributed, in England, towards supporting his school, and to be trustees thereof, for his charity; which these persons had agreed to do: That thereupon Dr. Wheelock had executed to them a deed of trust, in pursuance of such agreement between him and them, and, for divers good reasons, had referred it to these persons to determine the place in which the school should be finally established: And, to ena-

ble them to form a proper decision on this subject, had laid before them the several offers which had been made to him by the several governments in America, in order to induce him to settle and establish his school within the limits of such governments for their own emolument, and the increase of learning in their respective places, as well as for the furtherance of his general original design: And inasmuch as a number of the proprietors of lands in New Hampshire, animated by the example of the Governor himself and others, and in consideration that, without any impediment to its original design, the school might be enlarged and improved, to promote learning among the English, and to supply ministers to the people of that Province, had promised large tracts of land, provided the school should be established in that Province, the persons before mentioned, having weighed the reasons in favor of the several places proposed, had given the preference to this Province, and these offers: That Dr. Wheelock therefore represented the necessity of a legal incorporation, and proposed that certain gentlemen in America, whom he had already named and appointed in his will to be trustees of his charity after his decease, should compose the corporation. Upon this recital, and in consideration of the laudable original design of Dr. Wheelock, and willing that the best means of education be established in New Hampshire, for the benefit of the Province, the king granted the charter, by the advice of his Provincial Council.

The substance of the facts thus recited is, that Dr. Wheelock had founded a charity, on funds owned and procured by himself; that he was at that time the sole dispenser and sole administrator, as well as the legal owner, of these funds; that he had made his will, devising this property in trust, to continue the existence and uses of the school, and appointed trustees; that, in this state of things, he had been invited to fix his school, permanently, in New Hampshire, and to extend the design of it to the education of the youth of that Province; that before he removed his school, or accepted this invitation, which his friends in England had advised him to accept, he applied for a charter, to be granted, not to whomsoever the king or government of the Province should please, but to such persons as he named and appointed, namely, the persons whom he had already appointed to be the future trustees of his charity by his will.

The charter, or letters patent, then proceed to create such a corporation, and to appoint twelve persons to constitute it, by the name of the "Trustees of Dartmouth College"; to have perpetual existence, as such corporation, and with power to hold and dispose of lands and goods, for the use of the college, with all the ordinary powers of corporations. They are in their discretion to apply the funds and property of the college to the support of the president, tutors, ministers, and other officers of the college, and such missionaries and schoolmasters as they may see fit to employ among the Indians. There are to be twelve trustees for ever, *and no more;* and they are to have the right of filling vacancies occurring in their own body. The Rev. Mr. Wheelock is declared to be the founder of the college, and is, by the charter, appointed first president, with power to appoint a successor by his last will. All proper powers of government, superintendence, and visitation are vested in the trustees. They are to appoint and remove all officers at their discretion; to fix their salaries, and assign their duties; and to make all ordinances, orders, and laws for the government of the students. To the end that the persons who had acted as depositaries of the contributions in England, and who had also been contributors themselves, might be satisfied of the good use of their contributions, the president was annually, or when required, to transmit to them an account of the progress of the institution and the disbursements of its funds, so long as they should continue to act in that trust. These letters patent are to be good and effectual, in law, *against the king, his heirs and successors for ever*, without further grant or confirmation; and the trustees are to hold all and singular these privileges, advantages, liberties, and immunities to them and to their successors for ever.

No funds are given to the college by this charter. A corporate existence and capacity are given to the trustees, with the privileges and immunities which have been mentioned, to enable the founder and his associates the better to manage the funds which they themselves had contributed, and such others as they might afterwards obtain.

After the institution thus created and constituted had existed, uninterruptedly and usefully, nearly fifty years, the legislature of New Hampshire passed the acts in question.

The first act makes the twelve trustees under the charter, and

nine other individuals, to be appointed by the Governor and Council, a corporation, by a new name; and to this new corporation transfers all the *property, rights, powers, liberties, and privileges* of the old corporation; with further power to establish new colleges and an institute, and to apply all or any part of the funds to these purposes; subject to the power and control of a board of twenty-five overseers, to be appointed by the Governor and Council.

The second act makes further provisions for executing the objects of the first, and the last act authorizes the defendant, the treasurer of the plaintiffs, to retain and hold their property, against their will.

If these acts are valid, the old corporation is abolished, and a new one created. The first act does, in fact, if it can have any effect, create a new corporation, and transfer to it all the property and franchises of the old. The two corporations are not the same, in any thing which essentially belongs to the existence of a corporation. They have different names, and different powers, rights, and duties. Their organization is wholly different. The powers of the corporation are not vested in the same, or similar hands. In one, the trustees are twelve, and no more. In the other, they are twenty-one. In one, the power is in a single board. In the other, it is divided between two boards. Although the act professes to include the old trustees in the new corporation, yet that was without their assent, and against their remonstrance; and no person can be compelled to be a member of such a corporation against his will. It was neither expected nor intended that they should be members of the new corporation. The act itself treats the old corporation as at an end, and, going on the ground that all its functions have ceased, it provides for the first meeting and organization of the new corporation. It expressly provides, also, that the new corporation shall have and hold all the property of the old; a provision which would be quite unnecessary upon any other ground, than that the old corporation was dissolved. But if it could be contended that the effect of these acts was not entirely to abolish the old corporation, yet it is manifest that they impair and invade the rights, property, and powers of the trustees under the charter, as a corporation, and the legal rights, privileges, and immunities which belong to them, as individual members of the corporation.

The twelve trustees were the *sole* legal owners of all the property acquired under the charter. By the acts, others are admitted, against *their* will, to be joint owners. The twelve individuals who are trustees were possessed of all the franchises and immunities conferred by the charter. By the acts, *nine* other trustees and *twenty-five* overseers are admitted, against their will, to divide these franchises and immunities with them.

If, either as a corporation or as individuals, they have any legal rights, this forcible intrusion of others violates those rights, as manifestly as an entire and complete ouster and dispossession. These acts alter the whole constitution of the corporation. They affect the rights of the whole body as a corporation, and the rights of the individuals who compose it. They revoke corporate powers and franchises. They alienate and transfer the property of the college to others. By the charter, the trustees had a right to fill vacancies in their own number. This is now taken away. They were to consist of twelve, and, by express provision, of no more. This is altered. They and their successors, appointed by themselves, were for ever to hold the property. The legislature has found successors for them, before their seats are vacant. The powers and privileges which the twelve were to exercise exclusively, are now to be exercised by others. By one of the acts, they are subjected to heavy penalties if they exercise their offices, or any of those powers and privileges granted them by charter, and which they had exercised for fifty years. They are to be punished for not accepting the new grant, and taking its benefits. This, it must be confessed, is rather a summary mode of settling a question of constitutional right. Not only are new trustees forced into the corporation, but new trusts and uses are created. The college is turned into a university. Power is given to create new colleges, and, to authorize any diversion of the funds which may be agreeable to the new boards, sufficient latitude is given by the undefined power of establishing an institute. To these new colleges, and this institute, the funds contributed by the founder, Dr. Wheelock, and by the original donors, the Earl of Dartmouth and others, are to be applied, in plain and manifest disregard of the uses to which they were given.

The president, one of the old trustees, had a right to his office,

salary, and emoluments, subject to the twelve trustees alone. His title to these is now changed, and he is made accountable to new masters. So also all the professors and tutors. If the legislature can at pleasure make these alterations and changes in the rights and privileges of the plaintiffs, it may, with equal propriety, abolish these rights and privileges altogether. The same power which can do any part of this work can accomplish the whole. And, indeed, the argument on which these acts have been hitherto defended goes altogether on the ground, that this is such a corporation as the legislature may abolish at pleasure; and that its members have no *rights, liberties, franchises, property, or privileges*, which the legislature may not revoke, annul, alienate, or transfer to others, whenever it sees fit.

It will be contended by the plaintiffs, that these acts are not valid and binding on them, without their assent, —

1. Because they are against common right, and the Constitution of New Hampshire.

2. Because they are repugnant to the Constitution of the United States.

I am aware of the limits which bound the jurisdiction of the court in this case, and that on this record nothing can be decided but the single question, whether these acts are repugnant to the Constitution of the United States. Yet it may assist in forming an opinion of their true nature and character to compare them with those fundamental principles introduced into the State governments for the purpose of limiting the exercise of the legislative power, and which the Constitution of New Hampshire expresses with great fulness and accuracy.

It is not too much to assert, that the legislature of New Hampshire would not have been competent to pass the acts in question, and to make them binding on the plaintiffs without their assent, even if there had been, in the Constitution of New Hampshire, or of the United States, no special restriction on their power, because these acts are not the exercise of a power properly legislative.* Their effect and object are to take away, from one, rights, property, and franchises, and to grant them to another. This is not the exercise of a legislative power. To justify the taking away of vested rights there must be a forfeiture,

* Calder et ux. v. Bull, 3 Dallas, 386.

to adjudge upon and declare which is the proper province of the judiciary. Attainder and confiscation are acts of sovereign power, not acts of legislation. The British Parliament, among other unlimited powers, claims that of altering and vacating charters; not as an act of ordinary legislation, but of uncontrolled authority. It is theoretically omnipotent. Yet, in modern times, it has very rarely attempted the exercise of this power. In a celebrated instance, those who asserted this power in Parliament vindicated its exercise only in a case in which it could be shown, 1st. That the charter in question was a charter of political power; 2d. That there was a great and overruling state necessity, justifying the violation of the charter; 3d. That the charter had been abused and justly forfeited.* The bill affecting this charter did not pass. Its history is well known. The act which afterwards did pass, passed *with the assent of the corporation.* Even in the worst times, this power of Parliament to repeal and rescind charters has not often been exercised. The illegal proceedings in the reign of Charles the Second were under color of law. Judgments of forfeiture were obtained in the courts. Such was the case of the *quo warranto* against the city of London, and the proceedings by which the charter of Massachusetts was vacated.

The legislature of New Hampshire has no more power over the rights of the plaintiffs than existed somewhere, in some department of government, before the Revolution. The British Parliament could not have annulled or revoked this grant as an act of ordinary legislation. If it had done it at all, it could only have been in virtue of that sovereign power, called omnipotent, which does not belong to any legislature in the United States. The legislature of New Hampshire has the same power over this charter which belonged to the king who granted it and no more. By the law of England, the power to create corporations is a part of the royal prerogative.† By the Revolution, this power may be considered as having devolved on the legislature of the State, and it has accordingly been exercised by the legislature. But the king cannot abolish a corporation, or new-model it, or alter its powers, without its assent. This

* Annual Register, 1784, p. 160; Parl. Reg. 1783; Mr. Burke's Speech on Mr. Fox's East India Bill, Burke's Works, Vol. II. p. 414, 417, 467, 468, 486.

† 1 Black. 472, 473.

is the acknowledged and well-known doctrine of the common law. "Whatever might have been the notion in former times," says Lord Mansfield, "it is most certain now that the corporations of the universities are lay corporations; and that the crown cannot take away from them any rights that have been formerly subsisting in them under old charters or prescriptive usage."* After forfeiture duly found, the king may regrant the franchises; but a grant of franchises already granted, and of which no forfeiture has been found, is void.

Corporate franchises can only be forfeited by trial and judgment.† In case of a new charter or grant to an existing corporation, it may accept or reject it as it pleases.‡ It may accept such part of the grant as it chooses, and reject the rest.§ In the very nature of things, a charter cannot be forced upon any body. No one can be compelled to accept a grant; and without acceptance the grant is necessarily void.‖ It cannot be pretented that the legislature, as successor to the king in this part of his prerogative, has any power to revoke, vacate, or alter this charter. If, therefore, the legislature has not this power by any specific grant contained in the constitution; nor as included in its ordinary legislative powers; nor by reason of its succession to the prerogatives of the crown in this particular, on what ground would the authority to pass these acts rest, even if there were no prohibitory clauses in the constitution and the Bill of Rights?

But there *are* prohibitions in the constitution and Bill of Rights of New Hampshire, introduced for the purpose of limiting the legislative power and protecting the rights and property of the citizens. One prohibition is "that no person shall be deprived of his property, immunities, or privileges, put out of the protection of the law, or deprived of his life, liberty, or estate, but by judgment of his peers or the law of the land."

In the opinion, however, which was given in the court below it is denied that the trustees under the charter had any

* 3 Burr. 1656. † King *v.* Pasmore, 3 Term Rep. 244.
‡ King *v.* Vice-Chancellor of Cambridge, 3 Burr. 1656; 3 Term Rep. 240, — Lord Kenyon.
§ 3 Burr. 1661, and King *v.* Pasmore, *ubi supra*.
‖ Ellis *v.* Marshall, 2 Mass. Rep. 277; 1 Kyd on Corporations, 65, 66.

property, immunity, liberty, or privilege in this corporation, within the meaning of this prohibition in the Bill of Rights. It is said that it is a public corporation and public property; that the trustees have no greater interest in it than any other individuals; that it is not private property, which they can sell or transmit to their heirs, and that therefore they have no interest in it; that their office is a public trust, like that of the Governor or a judge, and that they have no more concern in the property of the college than the Governor in the property of the State, or than the judges in the fines which they impose on the culprits at their bar; that it is nothing to them whether their powers shall be extended or lessened, any more than it is to their honors whether their jurisdiction shall be enlarged or diminished. It is necessary, therefore, to inquire into the true nature and character of the corporation which was created by the charter of 1769.

There are divers sorts of corporations; and it may be safely admitted that the legislature has more power over some than others.* Some corporations are for government and political arrangement; such, for example, as cities, counties, and towns in New England. These may be changed and modified as public convenience may require, due regard being always had to the rights of property. Of such corporations, all who live within the limits are of course obliged to be members, and to submit to the duties which the law imposes on them as such. Other civil corporations are for the advancement of trade and business, such as banks, insurance companies, and the like. These are created, not by general law, but usually by grant. Their constitution is special. It is such as the legislature sees fit to give, and the grantees to accept.

The corporation in question is not a civil, although it is a lay corporation. It is an eleemosynary corporation. It is a private charity, originally founded and endowed by an individual, with a charter obtained for it at his request, for the better administration of his charity. "The eleemosynary sort of corporations are such as are constituted for the perpetual distributions of the free alms or bounty of the founder of them, to such persons as he has directed. Of this are all hospitals for the

* 1 Wooddeson, 474; 1 Black. 467.

maintenance of the poor, sick, and impotent; and all colleges both in our universities and out of them."* Eleemosynary corporations are for the management of private property, according to the will of the donors. They are private corporations. A college is as much a private corporation as a hospital; especially a college founded, as this was, by private bounty. A college is a charity. "The establishment of learning," says Lord Hardwicke, "is a charity, and so considered in the statute of Elizabeth. A devise to a college, for their benefit, is a laudable charity, and deserves encouragement." †

The legal signification of *a charity* is derived chiefly from the statute 43 Eliz. ch. 4. "Those purposes," says Sir William Grant, "are considered *charitable* which that statute enumerates." ‡ Colleges are enumerated as charities in that statute. The government, in these cases, lends its aid to perpetuate the beneficent intention of the donor, by granting a charter under which his private charity shall continue to be dispensed after his death. This is done either by incorporating the objects of the charity, as, for instance, the scholars in a college or the poor in a hospital, or by incorporating those who are to be governors or trustees of the charity. § In cases of the first sort, the founder is, by the common law, visitor. In early times it became a maxim, that he who gave the property might regulate it in future. *Cujus est dare, ejus est disponere.* This right of visitation descended from the founder to his heir as a right of property, and precisely as his other property went to his heir; and in default of heirs it went to the king, as all other property goes to the king for the want of heirs. The right of visitation arises from the property. It grows out of the endowment. The founder may, if he please, part with it at the time when he establishes the charity, and may vest it in others. Therefore, if he chooses that governors, trustees, or overseers should be appointed in the charter, he may cause it to be done, and his power of visitation may be transferred to them, instead of descending to his heirs. The persons thus assigned or appointed by the founder will be visitors, with all the powers of the founder, in exclusion of his heir. ‖ The right of visitation, then, accrues to them, as a matter of property, by the gift, transfer, or

* 1 Black. 471. † 1 Ves. 537. ‡ 9 Ves. Jun. 405.
§ 1 Wood. 474. ‖ 1 Black. 471.

appointment of the founder. This is a private right, which they can assert in all legal modes, and in which they have the same protection of the law as in all other rights. As visitors they may make rules, ordinances, and statutes, and alter and repeal them, as far as permitted so to do by the charter.* Although the charter proceeds from the crown or the government, it is considered as the will of the donor. It is obtained at his request. He imposes it as the rule which is to prevail in the dispensation of his bounty in all future times. The king or government which grants the charter is not thereby the founder, but he who furnishes the funds. The gift of the revenues is the foundation.†

The leading case on this subject is Phillips *v.* Bury.‡ This was an ejectment brought to recover the rectory-house, &c. of Exeter College in Oxford. The question was whether the plaintiff or defendant was legal rector. Exeter College was founded by an individual, and incorporated by a charter granted by Queen Elizabeth. The controversy turned upon the power of the visitor, and, in the discussion of the cause, the nature of college charters and corporations was very fully considered. Lord Holt's judgment, copied from his own manuscript, is found in 2 Term Reports, 346. The following is an extract:—

"That we may the better apprehend the nature of a visitor, we are to consider that there are in law two sorts of corporations aggregate; such as are for public government, and such as are for private charity. Those that are for the public government of a town, city, mystery, or the like, being for public advantage, are to be governed according to the laws of the land. If they make any particular private laws and constitutions, the validity and justice of them is examinable in the king's courts. Of these there are no particular private founders, and consequently no particular visitor; there are no patrons of these; therefore, if no provision be in the charter how the succession shall continue, the law supplieth the defect of that constitution, and saith it shall be by election; as mayor, aldermen, common council, and the like. But *private* and particular corporations for charity, founded and endowed by private persons, are subject to the private government of those who erect them; and therefore, if there be no visitor appointed by the found-

* 2 Term Rep. 350, 351. † 1 Black. 480.
‡ 1 Lord Raymond, 5; Comb. 265; Holt, 715; 1 Shower, 360; 4 Mod. 106 Skinn. 447.

er, the law appoints the founder and his heirs to be visitors, who are to act and proceed according to the particular laws and constitutions assigned them by the founder. It is now admitted on all hands that the founder is patron, and, as founder, is visitor, if no particular visitor be assigned; so that patronage and visitation are necessary consequents one upon another. For this visitatorial power was not introduced by any canons or constitutions ecclesiastical (as was said by a learned gentleman whom I have in my eye, in his argument of this case); it is an appointment of law. It ariseth from the property which the founder had in the lands assigned to support the charity; and as he is the author of the charity, the law gives him and his heirs a visitatorial power, that is, an authority to inspect the actions and regulate the behavior of the members that partake of the charity. For it is fit the members that are endowed, and that have the charity bestowed upon them, should not be left to themselves, but pursue the intent and design of him that bestowed it upon them. *Now indeed, where the poor, or those that receive the charity, are not incorporated, but there are certain trustees who dispose of the charity, there is no visitor, because the interest of the revenue is not vested in the poor that have the benefit of the charity, but they are subject to the orders and directions of the trustees.* But where they who are to enjoy the benefit of the charity are incorporated, there to prevent all perverting of the charity, or to compose differences that may happen among them, there is by law a visitatorial power; and it being a creature of the founder's own, it is reason that he and his heirs should have that power, unless by the founder it is vested in some other. Now there is no manner of difference beween a college and a hospital, except only in degree. A hospital is for those that are poor, and mean, and low, and sickly; a college is for another sort of indigent persons; but it hath another intent, to study in and breed up persons in the world that have no otherwise to live; but still it is as much within the reasons as hospitals. And if in a hospital the master and poor are incorporated, it is a college having a common seal to act by, although it hath not the name of a college (which always supposeth a corporation), because it is of an inferior degree; and in the one case and in the other there must be a visitor, either the founder and his heirs or one appointed by him; and both are eleemosynary."

Lord Holt concludes his whole argument by again repeating, that that college was a *private corporation*, and that the founder had a right to appoint a visitor, and to give him such power as he saw fit.*

* 1 Lord Raymond, 9.

The learned Bishop Stillingfleet's argument in the same cause, as a member of the House of Lords, when it was there heard, exhibits very clearly the nature of colleges and similar corporations. It is to the following effect. "That this absolute and conclusive power of visitors is no more than the law hath appointed in other cases, upon commissions of charitable uses: that the common law, and not any ecclesiastical canons, do place the power of visitation in the founder and his heirs, *unless he settle it upon others:* that although corporations for public government be subject to the courts of Westminster Hall, which have no particular or special visitors, yet corporations for charity, founded and endowed by private persons, are subject to the rule and government of those that erect them; but where the persons to whom the charity is given are not incorporated, there is no such visitatorial power, because the interest of the revenue is not invested in them; but where they are, the right of visitation ariseth from the foundation, and the founder may convey *it to whom and in what manner he pleases; and the visitor acts as founder, and by the same authority which he had, and consequently is no more accountable than he had been:* that the king by his charter can make a society to be incorporated so as to have the rights belonging to persons, as to legal capacities: that colleges, although founded by private persons, are yet incorporated by the king's charter; but although the kings by their charter made the colleges to be such in law, that is, to be legal corporations, yet they left to the particular founders authority to appoint what statutes they thought fit for the regulation of them. And not only the statutes, but the appointment of visitors, was left to them, and the manner of government, and the several conditions on which any persons were to be made or continue partakers of their bounty." *

These opinions received the sanction of the House of Lords, and they seem to be settled and undoubted law. Where there is a charter, vesting proper powers in trustees, or governors, they are visitors; and there is no control in any body else; except only that the courts of equity or of law will interfere so far as to preserve the revenues and prevent the perversion of the funds, and to keep the visitors within their prescribed bounds. "If

* 1 Burn's Eccles. Law, 443, Appendix, No. 3.

there be a charter with proper powers, the charity must be regulated in the manner prescribed by the charter. There is no ground for the controlling interposition of the courts of chancery. The interposition of the courts, therefore, in those instances in which the charities were founded on charters or by act of Parliament, and a visitor or governor and trustees appointed, must be referred to the general jurisdiction of the courts in all cases in which a trust conferred appears to have been abused, and not to an original right to direct the management of the charity, or the conduct of the governors or trustees." * "The original of all *visitatorial* power is the property of the donor, and the power every one has to dispose, direct, and regulate his own property; like the case of patronage; *cujus est dare*, &c. Therefore, if either the crown or the subject creates an eleemosynary foundation, and vests the charity in the persons who are to receive the benefit of it, since a contest might arise about the government of it, the law allows the founder or his heirs, or the person specially appointed by him to be visitor, to determine concerning his own creature. If the charity is not vested in the persons who are to partake, but in trustees for their benefit, no visitor can arise by implication, but the trustees have that power." †

"There is nothing better established," says Lord Commissioner Eyre, "than that this court does not entertain a general jurisdiction, or regulate and control charities *established by charter*. There the establishment is fixed and determined; and the court has no power to vary it. If the governors established for the regulation of it are not those who have the management of the revenue, this court has no jurisdiction, and if it is ever so much abused, as far as it respects the jurisdiction of this court it is without remedy; but if those established as governors have also the management of the revenues, this court does assume a jurisdiction of necessity, so far as they are to be considered as trustees of the revenue." ‡

"The foundations of colleges," says Lord Mansfield, "are to be considered in two views; namely, as they are *corporations* and

* 2 Fonb. 205, 206.

† Green *v.* Rutherforth, 1 Ves. 472, per Lord Hardwicke.

‡ Attorney-General *v.* Foundling Hospital, 2 Ves. Jun. 47. See also 2 Kyd on Corporations, 195; Cooper's Equity Pleading, 292.

as they are *eleemosynary*. As eleemosynary, they are the creatures of the founder; he may delegate his power, either generally or specially; he may prescribe particular modes and manners, as to the exercise of part of it. If he makes a general visitor (as by the general words *visitator sit*), the person so constituted has all incidental power; but he may be restrained as to particular instances. The founder may appoint a special visitor for a particular purpose, and no further. The founder may make a general visitor; and yet appoint an inferior particular power, to be executed without going to the visitor in the first instance." * And even if the king be founder, if he grant a charter, incorporating trustees and governors, *they are visitors*, and the king cannot visit.† A subsequent donation, or ingrafted fellowship, falls under the same general visitatorial power, if not otherwise specially provided.‡

In New England, and perhaps throughout the United States, eleemosynary corporations have been generally established in the latter mode; that is, by incorporating governors, or trustees, and vesting in them the right of visitation. Small variations may have been in some instances adopted; as in the case of Harvard College, where some power of inspection is given to the overseers, but not, strictly speaking, a visitatorial power, which still belongs, it is apprehended, to the fellows or members of the corporation. In general, there are many donors. A charter is obtained, comprising them all, or some of them, and such others as they choose to include, with the right of appointing successors. They are thus the visitors of their own charity, and appoint others, such as they may see fit, to exercise the same office in time to come. All such corporations are private. The case before the court is clearly that of an eleemosynary corporation. It is, in the strictest legal sense, a private charity. In King *v.* St. Catherine's Hall, § that college is called a private eleemosynary lay corporation. It was endowed by a private founder, and incorporated by letters patent. And in the same manner was Dartmouth College founded and incorporated. Dr. Wheelock is declared by the charter to be its founder. It

* St. John's College, Cambridge, *v.* Todington, 1 Burr. 200.
† Attorney-General *v.* Middleton, 2 Ves. 328.
‡ Green *v.* Rutherforth, *ubi supra*; St. John's College *v.* Todington, *ubi supra*
§ 4 Term Rep. 233.

was established by him, on funds contributed and collected by himself.

As such founder, he had a right of visitation, which he assigned to the trustees, and they received it by his consent and appointment, and held it under the charter.* He appointed these trustees visitors, and in that respect to take place of his heir; as he might have appointed devisees, to take his estate instead of his heir. Little, probably, did he think at that time, that the legislature would ever take away this property and these privileges, and give them to others. Little did he suppose that this charter secured to him and his successors no legal rights. Little did the other donors think so. If they had, the college would have been, what the university is now, a thing upon paper, existing only in name.

The numerous academies in New England have been established substantially in the same manner. They hold their property by the same tenure, and no other. Nor has Harvard College any surer title than Dartmouth College. It may to-day have more friends; but to-morrow it may have more enemies. Its legal rights are the same. So also of Yale College; and, indeed, of all the others. When the legislature gives to these institutions, it may and does accompany its grants with such conditions as it pleases. The grant of lands by the legislature of New Hampshire to Dartmouth College, in 1789, was accompanied with various conditions. When donations are made, by the legislature or others, to a charity already existing, without any condition, or the specification of any new use, the donation follows the nature of the charity. Hence the doctrine, that all eleemosynary corporations are private bodies. They are founded by private persons, and on private property. The public cannot be charitable in these institutions. It is not the money of the public, but of private persons, which is dispensed. It may be public, that is general, in its uses and advantages; and the State may very laudably add contributions of its own to the funds; but it is still private in the tenure of the property, and in the right of administering the funds.

If the doctrine laid down by Lord Holt, and the House of Lords, in Phillips *v.* Bury, and recognized and established in

* Black. *ubi supra.*

all the other cases, be correct, the property of this college was private property; it was vested in the trustees by the charter, and to be administered by them, according to the will of the founder and donors, as expressed in the charter. They were also visitors of the charity, in the most ample sense. They had, therefore, as they contend, privileges, property, and immunities, within the true meaning of the Bill of Rights. They had rights, and still have them, which they can assert against the legislature, as well as against other wrong-doers. It makes no difference, that the estate is holden for certain trusts. The legal estate is still theirs. They have a right in the property, and they have a right of visiting and superintending the trust; and this is an object of legal protection, as much as any other right. The charter declares that the powers conferred on the trustees are "privileges, advantages, liberties, and immunities"; and that they shall be for ever holden by them and their successors. The New Hampshire Bill of Rights declares that no one shall be deprived of his "property, privileges, or immunities," but by judgment of his peers, or the law of the land. The argument on the other side is, that, although these terms may mean something in the Bill of Rights, they mean nothing in this charter. But they are terms of legal signification, and very properly used in the charter. They are equivalent with *franchises*. Blackstone says that *franchise* and *liberty* are used as synonymous terms. And after enumerating other liberties and franchises, he says: "It is likewise a franchise for a number of persons to be incorporated and subsist as a body politic, with a power to maintain perpetual succession and do other corporate acts; and each individual member of such a corporation is also said to have a franchise or freedom." *

Liberties is the term used in Magna Charta as including franchises, privileges, immunities, and all the rights which belong to that class. Professor Sullivan says, the term signifies the "*privileges* that some of the subjects, whether single persons or bodies corporate, have above others by the lawful grant of the king; as the chattels of felons or outlaws, and the lands *and privileges of corporations.*" †

The privilege, then, of being a member of a corporation,

* 2 Black. Com. 37. † Sull. 41st Lect.

under a lawful grant, and of exercising the rights and powers of such member, is such a privilege, *liberty*, or *franchise*, as has been the object of legal protection, and the subject of a legal interest, from the time of Magna Charta to the present moment. The plaintiffs have such an interest in this corporation, individually, as they could assert and maintain in a court of law, not as agents of the public, but in their own right. Each trustee has a *franchise*, and if he be disturbed in the enjoyment of it, he would have redress, on appealing to the law, as promptly as for any other injury. If the other trustees should conspire against any one of them to prevent his equal right and voice in the appointment of a president or professor, or in the passing of any statute or ordinance of the college, he would be entitled to his action, for depriving him of his franchise. It makes no difference, that this property is to be holden and administered, and these franchises exercised, for the purpose of diffusing learning. No principle and no case establishes any such distinction. The public may be benefited by the use of this property. But this does not change the nature of the property, or the rights of the owners. The object of the charter may be public good; so it is in all other corporations; and this would as well justify the resumption or violation of the grant in any other case as in this. In the case of an advowson, the use is public, and the right cannot be turned to any private benefit or emolument. It is nevertheless a legal private right, and the *property* of the owner, as emphatically as his freehold. The rights and privileges of trustees, visitors, or governors of incorporated colleges, stand on the same foundation. They are so considered, both by Lord Holt and Lord Hardwicke.*

To contend that the rights of the plaintiffs may be taken away, because they derive from them no pecuniary benefit or private emolument, or because they cannot be transmitted to their heirs, or would not be assets to pay their debts, is taking an extremely narrow view of the subject. According to this notion, the case would be different, if, in the charter, they had stipulated for a commission on the disbursement of the funds; and they have ceased to have any interest in the property, because they have undertaken to administer it gratuitously.

* Phillips *v.* Bury, and Green *v.* Rutherforth, *ubi supra*. See also 2 Black. 91.

It cannot be necessary to say much in refutation of the idea, that there cannot be a legal interest, or ownership, in any thing which does not yield a pecuniary profit; as if the law regarded no rights but the rights of money, and of visible, tangible property. Of what nature are all rights of suffrage? No elector has a particular personal interest; but each has a legal right, to be exercised at his own discretion, and it cannot be taken away from him. The exercise of this right directly and very materially affects the public; much more so than the exercise of the privileges of a trustee of this college. Consequences of the utmost magnitude may sometimes depend on the exercise of the right of suffrage by one or a few electors. Nobody was ever yet heard to contend, however, that on that account the public might take away the right, or impair it. This notion appears to be borrowed from no better source than the repudiated doctrine of the three judges in the Aylesbury case.* That was an action against a returning officer for refusing the plaintiff's vote, in the election of a member of Parliament. Three of the judges of the King's Bench held, that the action could not be maintained, because, among other objections, "it was not any matter of profit, either *in presenti*, or *in futuro*." It would not enrich the plaintiff *in presenti*, nor would it *in futuro* go to his heirs, or answer to pay his debts. But Lord Holt and the House of Lords were of another opinion. The judgment of the three judges was reversed, and the doctrine they held, having been exploded for a century, seems now for the first time to be revived.

Individuals have a right to use their own property for purposes of benevolence, either towards the public, or towards other individuals. They have a right to exercise this benevolence in such lawful manner as they may choose; and when the government has induced and excited it, by contracting to give perpetuity to the stipulated manner of exercising it, it is not law, but violence, to rescind this contract, and seize on the property. Whether the State will grant these franchises, and under what conditions it will grant them, it decides for itself. But when once granted, the constitution holds them to be sacred, till forfeited for just cause.

* Ashby v. White, 2 Lord Raymond, 938.

That all property, of which the use may be beneficial to the public, belongs therefore to the public, is quite a new doctrine. It has no precedent, and is supported by no known principle. Dr. Wheelock might have answered his purposes, in this case, by executing a private deed of trust. He might have conveyed his property to trustees, for precisely such uses as are described in this charter. Indeed, it appears that he had contemplated the establishing of his school in that manner, and had made his will, and devised the property to the same persons who were afterwards appointed trustees in the charter. Many literary and other charitable institutions are founded in that manner, and the trust is renewed, and conferred on other persons, from time to time, as occasion may require. In such a case, no lawyer would or could say, that the legislature might divest the trustees, constituted by deed or will, seize upon the property, and give it to other persons, for other purposes. And does the granting of a charter, which is only done to perpetuate the trust in a more convenient manner, make any difference? Does or can this change the nature of the charity, and turn it into a public political corporation? Happily, we are not without authority on this point. It has been considered and adjudged. Lord Hardwicke says, in so many words, "The charter of the crown cannot make a charity more or less public, but only more permanent than it would otherwise be."*

The granting of the corporation is but making the trust perpetual, and does not alter the nature of the charity. The very object sought in obtaining such charter, and in giving property to such a corporation, is to make and keep it private property, and to clothe it with all the security and inviolability of private property. The intent is, that there shall be a legal private ownership, and that the legal owners shall maintain and protect the property, for the benefit of those for whose use it was designed. Who ever endowed the public? Who ever appointed a legislature to administer his charity? Or who ever heard, before, that a gift to a college, or a hospital, or an asylum, was, in reality, nothing but a gift to the State?

The State of Vermont is a principal donor to Dartmouth College. The lands given lie in that State. This appears in

* Attorney-General v. Pearce, 2 Atk. 87.

the special verdict. Is Vermont to be considered as having intended a gift to the State of New Hampshire in this case, as, it has been said, is to be the reasonable construction of all donations to the college? The legislature of New Hampshire affects to represent the public, and therefore claims a right to control all property destined to public use. What hinders Vermont from considering herself equally the representative of the public, and from resuming her grants, at her own pleasure? Her right to do so is less doubtful than the power of New Hampshire to pass the laws in question.

In University *v.* Foy,* the Supreme Court of North Carolina pronounced unconstitutional and void a law repealing a grant to the University of North Carolina, although that university was originally erected and endowed by a statute of the State. That case was a grant of lands, and the court decided that it could not be resumed. This is the grant of a power and capacity to hold lands. Where is the difference of the cases, upon principle?

In Terrett *v.* Taylor† this court decided that a legislative grant or confirmation of lands, for the purposes of moral and religious instruction, could no more be rescinded than other grants. The nature of the use was not holden to make any difference. A grant to a parish or church, for the purposes which have been mentioned, cannot be distinguished, in respect to the title it confers, from a grant to a college for the promotion of piety and learning. To the same purpose may be cited the case of Pawlett *v.* Clark. The State of Vermont, by statute, in 1794, granted to the respective towns in that State certain glebe lands lying within those towns for the sole use and support of religious worship. In 1799, an act was passed to repeal the act of 1794; but this court declared, that the act of 1794, "so far as it granted the glebes to the towns, could not afterwards be repealed by the legislature, so as to divest the rights of the towns under the grant."‡

It will be for the other side to show that the nature of the use decides the question whether the legislature has power to resume its grants. It will be for those who maintain such a doctrine to show the principles and cases upon which it rests. It will be for them also to fix the limits and boundaries of their

* 2 Haywood's Rep. † 9 Cranch, 43. ‡ 9 Cranch, 292.

doctrine, and to show what are and what are not such uses as to give the legislature this power of resumption and revocation. And to furnish an answer to the cases cited, it will be for them further to show that a grant for the use and support of religious worship stands on other ground than a grant for the promotion of piety and learning.

I hope enough has been said to show that the trustees possessed vested liberties, privileges, and immunities, under this charter; and that such liberties, privileges, and immunities, being once lawfully obtained and vested, are as inviolable as any vested rights of property whatever. Rights to do certain acts, such, for instance, as the visitation and superintendence of a college and the appointment of its officers, may surely be vested rights, to all legal intents, as completely as the right to possess property. A late learned judge of this court has said, "When I say that a *right* is vested in a citizen, I mean that he has the power to do *certain actions*, or to possess *certain things*, according to the law of the land"*

If such be the true nature of the plaintiffs' interests under this charter, what are the articles in the New Hampshire Bill of Rights which these acts infringe?

They infringe the second article; which says, that the citizens of the State have a right to hold and possess property. The plaintiffs had a legal property in this charter; and they had acquired property under it. The acts deprive them of both. They impair and take away the charter; and they appropriate the property to new uses, against their consent. The plaintiffs cannot now hold the property acquired by themselves, and which this article says they have a right to hold.

They infringe the twentieth article. By that article it is declared that, in questions of property, there is a right to trial. The plaintiffs are divested, without trial or judgment.

They infringe the twenty-third article. It is therein declared that no retrospective laws shall be passed. This article bears directly on the case. These acts must be deemed to be retrospective, within the settled construction of that term. What a retrospective law is, has been decided, on the construction of this very article, in the Circuit Court for the First Circuit. The

* 3 Dallas, 394.

learned judge of that circuit says: "Every statute which takes away or impairs vested rights, acquired under existing laws, must be deemed retrospective."* That all such laws are retrospective was decided also in the case of Dash *v.* Van Kleek,† where a most learned judge quotes this article from the constitution of New Hampshire, with manifest approbation, as a plain and clear expression of those fundamental and unalterable principles of justice, which must lie at the foundation of every free and just system of laws. Can any man deny that the plaintiffs had rights, under the charter, which were legally vested, and that by these acts those rights are impaired?

"It is a principle in the English law," says Chief Justice Kent, in the case last cited, "as ancient as the law itself, that a statute, even of its omnipotent Parliament, is not to have a retrospective effect. *Nova constitutio futuris formam imponere debet, et non præteritis.*‡ The maxim in Bracton was taken from the civil law, for we find in that system the same principle, expressed substantially in the same words, that the lawgiver cannot alter his mind to the prejudice of a vested right. *Nemo potest mutare concilium suum in alterius injuriam.*§ This maxim of Papinian is general in its terms, but Dr. Taylor‖ applies it directly as a restriction upon the lawgiver, and a declaration in the Code leaves no doubt as to the sense of the civil law. *Leges et constitutiones futuris certum est dare formam negotiis, non ad facta præterita revocari, nisi nominatim, et de præterito tempore, et adhuc pendentibus negotiis cautum sit.*¶ This passage, according to the best interpretation of the civilians, relates not merely to future suits, but to future, as contradistinguished from past, contracts and vested rights.** It is indeed admitted that the prince may enact a retrospective law, provided it be done *expressly;* for the will of the prince under the despotism of the Roman emperors was paramount to every obligation. Great latitude was anciently allowed to legislative expositions of statutes; for the separation of the judicial from the legislative power was not then distinctly known or prescribed. The prince was in the habit of interpreting his own laws for particular

* Society *v.* Wheeler, 2 Gal. 103.
‡ Bracton, Lib. 4, fol. 228. 2d Inst. 292.
‖ Elements of the Civil Law, p. 168.
** Perezii Prælect. h. t.
† 7 Johnson's Rep. 477.
§ Dig. 50. 17. 75.
¶ Cod. 1. 14. 7.

occasions. This was called the *Interlocutio Principis;* and this, according to Huber's definition, was, *quando principes inter partes loquuntur et jus dicunt.** No correct civilian, and especially no proud admirer of the ancient republic (if any such then existed), could have reflected on this interference with private rights and pending suits without disgust and indignation; and we are rather surprised to find that, under the violent and arbitrary genius of the Roman government, the principle before us should have been acknowledged and obeyed to the extent in which we find it. The fact shows that it must be founded in the clearest justice. Our case is happily very different from that of the subjects of Justinian. With us the power of the lawgiver is limited and defined; the judicial is regarded as a distinct, independent power; private rights are better understood and more exalted in public estimation, as well as secured by provisions dictated by the spirit of freedom, and unknown to the civil law. Our constitutions do not admit the power assumed by the Roman prince, and the principle we are considering is now to be regarded as sacred."

These acts infringe also the thirty-seventh article of the constitution of New Hampshire; which says, that the powers of government shall be kept separate. By these acts, the legislature assumes to exercise a judicial power. It declares a forfeiture, and resumes franchises, once granted, without trial or hearing.

If the constitution be not altogether waste-paper, it has restrained the power of the legislature in these particulars. If it has any meaning, it is that the legislature shall pass no act directly and manifestly impairing private property and private privileges. It shall not judge by act. It shall not decide by act. It shall not deprive by act. But it shall leave all these things to be tried and adjudged by the law of the land.

The fifteenth article has been referred to before. It declares that no one shall be "deprived of his property, immunities, or privileges, but by the judgment of his peers or the law of the land." Notwithstanding the light in which the learned judges in New Hampshire viewed the rights of the plaintiffs under the charter, and which has been before adverted to, it is found to be admitted in their opinion, that those rights are privileges within

* Prælect. Juris Civ., Vol. II. p. 545.

the meaning of this fifteenth article of the Bill of Rights. Having quoted that article, they say: "That the right to manage the affairs of this college is a privilege, within the meaning of this clause of the Bill of Rights, is not to be doubted." In my humble opinion, this surrenders the point. To resist the effect of this admission, however, the learned judges add: "But how a privilege can be protected from the operation of the law of the land by a clause in the constitution, declaring that it shall not be taken away but by the law of the land, is not very easily understood." This answer goes on the ground, that the acts in question are laws of the land, within the meaning of the constitution. If they be so, the argument drawn from this article is fully answered. If they be not so, it being admitted that the plaintiffs' rights are "privileges," within the meaning of the article, the argument is not answered, and the article is infringed by the acts.

Are, then, these acts of the legislature, which affect only particular persons and their particular privileges, laws of the land? Let this question be answered by the text of Blackstone. "And first it (i. e. law) is a *rule:* not a transient, sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law." * Lord Coke is equally decisive and emphatic. Citing and commenting on the celebrated twenty-ninth chapter of Magna Charta, he says: "No man shall be disseized &c., unless it be by the lawful judgment, that is, verdict of equals, or by the law of the land, that is (to speak it once for all), by the due course and process of law." † Have the plaintiffs lost their franchises by "due course and process of law"? On the contrary, are not these acts "particular acts of the legislature, which have no relation to the community in general, and which are rather sentences than laws"?

By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds

* 1 Black. Com. 44. † Coke, 2 Inst. 46.

upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Every thing which may pass under the form of an enactment is not therefore to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land.

Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general, permanent law for courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law or to administer the justice of the country. "Is that the law of the land," said Mr. Burke, "upon which, if a man go to Westminster Hall, and ask counsel by what title or tenure he holds his privilege or estate *according to the law of the land*, he should be told, that the law of the land is not yet known; that no decision or decree has been made in his case; that when a decree shall be passed, he will then know *what the law of the land is?* Will this be said to be the law of the land, by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?"

That the power of electing and appointing the officers of this college is not only a right of the trustees as a corporation, generally, and in the aggregate, but that each individual trustee has also his own individual franchise in such right of election and appointment, is according to the language of all the authorities. Lord Holt says: "It is agreeable to reason and the rules of law, that a franchise should be vested in the corporation aggregate, and yet the benefit of it to redound to the particular members, and to be enjoyed by them in their private capacity. Where the privilege of election is used by particular persons, *it is a particular right, vested in every particular man.*" *

* 2 Lord Raymond, 952.

It is also to be considered, that the president and professors of this college have rights to be affected by these acts. Their interest is similar to that of fellows in the English colleges; because they derive their living, wholly or in part, from the founder's bounty. The president is one of the trustees or corporators. The professors are not necessarily members of the corporation; but they are appointed by the trustees, are removable only by them, and have fixed salaries payable out of the general funds of the college. Both president and professors have freeholds in their offices; subject only to be removed by the trustees, as their legal visitors, for good cause. All the authorities speak of fellowships in colleges as freeholds, notwithstanding the fellows may be liable to be suspended or removed, for misbehavior, by their constituted visitors.

Nothing could have been less expected, in this age, than that there should have been an attempt, by acts of the legislature, to take away these college livings, the inadequate but the only support of literary men who have devoted their lives to the instruction of youth. The president and professors were appointed by the twelve trustees. They were accountable to nobody else, and could be removed by nobody else. They accepted their offices on this tenure. Yet the legislature has appointed other persons, with power to remove these officers and to deprive them of their livings; and those other persons have exercised that power. No description of private property has been regarded as more sacred than college livings. They are the estates and freeholds of a most deserving class of men; of scholars who have consented to forego the advantages of professional and public employments, and to devote themselves to science and literature and the instruction of youth in the quiet retreats of academic life. Whether to dispossess and oust them; to deprive them of their office, and to turn them out of their livings; to do this, not by the power of their legal visitors or governors, but by acts of the legislature, and to do it without forfeiture and without fault; whether all this be not in the highest degree an indefensible and arbitrary proceeding, is a question of which there would seem to be but one side fit for a lawyer or a scholar to espouse.

Of all the attempts of James the Second to overturn the law, and the rights of his subjects, none was esteemed more arbitra-

ry or tyrannical than his attack on Magdalen College, Oxford; and yet that attempt was nothing but to put out one president and put in another. The president of that college, according to the charter and statutes, is to be chosen by the fellows, who are the corporators. There being a vacancy, the king chose to take the appointment out of the hands of the fellows, the legal electors of a president, into his own hands. He therefore sent down his mandate, commanding the fellows to admit for president a person of his nomination; and, inasmuch as this was directly against the charter and constitution of the college, he was pleased to add a *non obstante* clause of sufficiently comprehensive import. The fellows were commanded to admit the person mentioned in the mandate, "any statute, custom, or constitution to the contrary notwithstanding, wherewith we are graciously pleased to dispense, in this behalf." The fellows refused obedience to this mandate, and Dr. Hough, a man of independence and character, was chosen president by the fellows, according to the charter and statutes. The king then assumed the power, in virtue of his prerogative, to send down certain commissioners to turn him out; which was done accordingly; and Parker, a creature suited to the times, put in his place. Because the president, who was rightfully and legally elected, *would not deliver the keys, the doors were broken open.* "The nation as well as the university," says Bishop Burnet,* "looked on all these proceedings with just indignation. It was thought an open piece of robbery and burglary when men, authorized by no legal commission, came and forcibly turned men out of their possession and freehold." Mr. Hume, although a man of different temper, and of other sentiments, in some respects, than Dr. Burnet, speaks of this arbitrary attempt of prerogative in terms not less decisive. "The president, and all the fellows," says he, "except two, who complied, were expelled the college, and Parker was put in possession of the office. This act of violence, of all those which were committed during the reign of James, is perhaps the most illegal and arbitrary. When the dispensing power was the most strenuously insisted on by court lawyers, it had still been allowed that the statutes which regard private property could not legally be in-

* History of his own Times, Vol. III. p. 119.

fringed by that prerogative. Yet, in this instance, it appeared that even these were not now secure from invasion. The privileges of a college are attacked; men are illegally dispossessed of their property for adhering to their duty, to their oaths, and to their religion."

This measure King James lived to repent, after repentance was too late. When the charter of London was restored, and other measures of violence were retracted, to avert the impending revolution, the expelled president and fellows of Magdalen College were permitted to resume their rights. It is evident that this was regarded as an arbitrary interference with private property. Yet private property was no otherwise attacked than as a person was appointed to administer and enjoy the revenues of a college in a manner and by persons not authorized by the constitution of the college. A majority of the members of the corporation would not comply with the king's wishes. A minority would. The object was therefore to make this minority a majority. To this end the king's commissioners were directed to interfere in the case, and they united with the two complying fellows, and expelled the rest; and thus effected a change in the government of the college. The language in which Mr. Hume and all other writers speak of this abortive attempt of oppression, shows that colleges were esteemed to be, as they truly are, private corporations, and the property and privileges which belong to them *private* property and *private* privileges. Court lawyers were found to justify the king in dispensing with the laws; that is, in assuming and exercising a legislative authority. But no lawyer, not even a court lawyer, in the reign of King James the Second, as far as appears, was found to say that, even by this high authority, he could infringe the franchises of the fellows of a college, and take away their livings. Mr. Hume gives the reason; it is, that such franchises were regarded, in a most emphatic sense, *as private property.*[*]

If it could be made to appear that the trustees and the president and professors held their offices and franchises during the pleasure of the legislature, and that the property holden belonged to the State, then indeed the legislature have done no

[*] See a full account of this case in State Trials, 4th ed., Vol. IV. p. 262.

more than they had a right to do. But this is not so. The charter is a charter of privileges and immunities; and these are holden by the trustees expressly against the State for ever.

It is admitted that the State, by its courts of law, can enforce the will of the donor, and compel a faithful execution of the trust. The plaintiffs claim no exemption from legal responsibility. They hold themselves at all times answerable to the law of the land, for their conduct in the trust committed to them. They ask only to hold the property of which they are owners, and the franchises which belong to them, until they shall be found, by due course and process of law, to have forfeited them.

It can make no difference whether the legislature exercise the power it has assumed by removing the trustees and the president and professors, directly and by name, or by appointing others to expel them. The principle is the same, and in point of fact the result has been the same. If the entire franchise cannot be taken away, neither can it be essentially impaired. If the trustees are legal owners of the property, they are sole owners. If they are visitors, they are sole visitors. No one will be found to say, that, if the legislature may do what it has done, it may not do any thing and every thing which it may choose to do, relative to the property of the corporation, and the privileges of its members and officers.

If the view which has been taken of this question be at all correct, this was an eleemosynary corporation, a private charity. The property was private property. The trustees were visitors, and the right to hold the charter, administer the funds, and visit and govern the college, was a franchise and privilege, solemnly granted to them. The use being public in no way diminishes their legal estate in the property, or their title to the franchise. There is no principle, nor any case, which declares that a gift to such a corporation is a gift to the public. The acts in question violate property. They take away privileges, immunities, and franchises. They deny to the trustees the protection of the law; and they are retrospective in their operation. In all which respects they are against the constitution of New Hampshire.

The plaintiffs contend, in the second place, that the acts in question are repugnant to the tenth section of the first article

of the Constitution of the United States. The material words of that section are: "No State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

The object of these most important provisions in the national constitution has often been discussed, both here and elsewhere. It is exhibited with great clearness and force by one of the distinguished persons who framed that instrument. "Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark, in favor of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding." *

It has already been decided in this court, that a *grant* is a contract, within the meaning of this provision; and that a grant by a State is also a contract, as much as the grant of an individual. In the case of Fletcher *v.* Peck † this court says: "A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the government. A contract executed is one in which the object

* The Federalist, No. 44, by Mr. Madison. † 6 Cranch, 87.

of contract is performed; and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. If, under a fair construction of the Constitution, grants are comprehended under the term contracts, is a grant from the State excluded from the operation of the provision? Is the clause to be considered as inhibiting the State from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description. If contracts made with the State are to be exempted from their operation, the exception must arise from the character of the contracting party, not from the words which are employed. Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State."

It has also been decided, that a grant by a State before the Revolution is as much to be protected as a grant since.* But the case of Terrett *v.* Taylor, before cited, is of all others most pertinent to the present argument. Indeed, the judgment of the court in that case seems to leave little to be argued or decided in this. "A private corporation," say the court, "created by the legislature, may lose its franchises by a *misuser* or a *nonuser* of them; and they may be resumed by the government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land, and is a

* New Jersey *v.* Wilson, 7 Cranch, 164.

tacit condition annexed to the creation of every such corporation. Upon a change of government, too, it may be admitted, that such exclusive privileges attached to a private corporation as are inconsistent with the new government may be abolished. In respect, also, to *public* corporations which exist only for public purposes, such as counties, towns, cities, and so forth, the legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those for whom and at whose expense it was originally purchased. But that the legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

This court, then, does not admit the doctrine, that a legislature can repeal statutes creating private corporations. If it cannot repeal them altogether, of course it cannot repeal any part of them, or impair them, or essentially alter them, without the consent of the corporators. If, therefore, it has been shown that this college is to be regarded as a private charity, this case is embraced within the very terms of that decision. A grant of corporate powers and privileges is as much a contract as a grant of land. What proves all charters of this sort to be contracts is, that they must be accepted to give them force and effect. If they are not accepted, they are void. And in the case of an existing corporation, if a new charter is given it, it may even accept part and reject the rest. In Rex *v.* Vice-Chancellor of Cambridge,* Lord Mansfield says: "There is a vast deal of difference between a new charter granted to a new corporation, (who must take it as it is given,) and a new charter given to a corporation already in being, and acting either under a former charter or under prescriptive usage. The latter, a corporation

* 3 Burr. 1656.

already existing, are not obliged to accept the new charter *in toto*, and to receive either all or none of it; they may act partly under it, and partly under their old charter or prescription. The validity of these new charters must turn upon the acceptance of them." In the same case Mr. Justice Wilmot says: "It is the concurrence and acceptance of the university that gives the force to the charter of the crown." In the King *v.* Pasmore,* Lord Kenyon observes: "Some things are clear: when a corporation exists capable of discharging its functions, the crown cannot obtrude another charter upon them; they may either accept or reject it." †

In all cases relative to charters, the acceptance of them is uniformly alleged in the pleadings. This shows the general understanding of the law, that they are grants or contracts; and that parties are necessary to give them force and validity. In King *v.* Dr. Askew,‡ it is said: "The crown cannot oblige a man to be a corporator, without his consent; he shall not be subject to the inconveniences of it, without accepting it and assenting to it." These terms, "acceptance" and "assent," are the very language of contract. In Ellis *v.* Marshall,§ it was expressly adjudged that the naming of the defendant among others, in an act of incorporation, did not of itself make him a corporator; and that his assent was necessary to that end. The court speak of the act of incorporation as a grant, and observe: "That a man may refuse a grant, whether from the government or an individual, seems to be a principle too clear to require the support of authorities." But Justice Buller, in King *v.* Pasmore, furnishes, if possible, a still more direct and explicit authority. Speaking of a corporation for government, he says: "I do not know how to reason on this point better than in the manner urged by one of the relator's counsel; who considered the grant of incorporation to be a compact between the crown and a certain number of the subjects, the latter of whom undertake, in consideration of the privileges which are bestowed, to exert themselves for the good government of the place." This language applies with peculiar propriety and force to the case before the court. It was in consequence of the "privileges bestowed," that Dr. Wheelock and his associates undertook

* 3 Term Rep. 240.
‡ 4 Burr. 2200.
† See also 1 Kyd on Corp. 65.
§ 2 Mass. Rep. 269.

to exert themselves for the instruction and education of youth in this college; and it was on the same consideration that the founder endowed it with his property.

And because charters of incorporation are of the nature of contracts, they cannot be altered or varied but by consent of the original parties. If a charter be granted by the king, it may be altered by a new charter granted by the king, and accepted by the corporators. But if the first charter be granted by Parliament, the consent of Parliament must be obtained to any alteration. In King *v.* Miller,* Lord Kenyon says: "Where a corporation takes its rise from the king's charter, the king by granting, and the corporation by accepting another charter, may alter it, because it is done with the consent of all the parties who are competent to consent to the alteration." †

There are, in this case, all the essential constituent parts of a contract. There is something to be contracted about, there are parties, and there are plain terms in which the agreement of the parties on the subject of the contract is expressed. There are mutual considerations and inducements. The charter recites, that the founder, on his part, has agreed to establish his seminary in New Hampshire, and to enlarge it beyond its original design, among other things, for the benefit of that Province; and thereupon a charter is given to him and his associates, designated by himself, promising and assuring to them, under the plighted faith of the State, the right of governing the college and administering its concerns in the manner provided in the charter. There is a complete and perfect grant to them of all the power of superintendence, visitation, and government. Is not this a contract? If lands or money had been granted to him and his associates, for the same purposes, such grant could not be rescinded. And is there any difference, in legal contemplation, between a grant of corporate franchises and a grant of tangible property? No such difference is recognized in any decided case, nor does it exist in the common apprehension of mankind.

It is therefore contended, that this case falls within the true meaning of this provision of the Constitution, as expounded in the decisions of this court; that the charter of 1769 is a con-

* 6 Term Rep. 277.

† See also Ex parte Bolton School, 2 Brown's Ch. Rep. 662.

tract, a stipulation or agreement, mutual in its considerations, express and formal in its terms, and of a most binding and solemn nature. That the acts in question impair this contract, has already been sufficiently shown. They repeal and abrogate its most essential parts.

A single observation may not be improper on the opinion of the court of New Hampshire, which has been published. The learned judges who delivered that opinion have viewed this question in a very different light from that in which the plaintiffs have endeavored to exhibit it. After some general remarks, they assume that this college is a public corporation; and on this basis their judgment rests. Whether all colleges are not regarded as private and eleemosynary corporations, by all law writers and all judicial decisions; whether this college was not founded by Dr. Wheelock; whether the charter was not granted at his request, the better to execute a trust, which he had already created; whether he and his associates did not become visitors, by the charter; and whether Dartmouth College be not, therefore, in the strictest sense, a private charity, are questions which the learned judges do not appear to have discussed.

It is admitted in that opinion, that, if it be a private corporation, its rights stand on the same ground as those of an individual. The great question, therefore, to be decided is, To which class of corporations do colleges thus founded belong? And the plaintiffs have endeavored to satisfy the court, that, according to the well-settled principles and uniform decisions of law, they are private, eleemosynary corporations.

Much has heretofore been said on the necessity of admitting such a power in the legislature as has been assumed in this case. Many cases of possible evil have been imagined, which might otherwise be without remedy. Abuses, it is contended, might arise in the management of such institutions, which the ordinary courts of law would be unable to correct. But this is only another instance of that habit of supposing extreme cases, and then of reasoning from them, which is the constant refuge of those who are obliged to defend a cause, which, upon its merits, is indefensible. It would be sufficient to say in answer, that it is not pretended that there was here any such case of necessity. But a still more satisfactory answer is, that the apprehension of danger is groundless, and therefore the whole

argument fails. Experience has not taught us that there is danger of great evils or of great inconvenience from this source. Hitherto, neither in our own country nor elsewhere have such cases of necessity occurred. The judicial establishments of the State are presumed to be competent to prevent abuses and violations of trust, in cases of this kind, as well as in all others. If they be not, they are imperfect, and their amendment would be a most proper subject for legislative wisdom. Under the government and protection of the general laws of the land, these institutions have always been found safe, as well as useful. They go on, with the progress of society, accommodating themselves easily, without sudden change or violence, to the alterations which take place in its condition, and in the knowledge, the habits, and pursuits of men. The English colleges were founded in Catholic ages. Their religion was reformed with the general reformation of the nation; and they are suited perfectly well to the purpose of educating the Protestant youth of modern times. Dartmouth College was established under a charter granted by the Provincial government; but a better constitution for a college, or one more adapted to the condition of things under the present government, in all material respects, could not now be framed. Nothing in it was found to need alteration at the Revolution. The wise men of that day saw in it one of the best hopes of future times, and commended it as it was, with parental care, to the protection and guardianship of the government of the State. A charter of more liberal sentiments, of wiser provisions, drawn with more care, or in a better spirit, could not be expected at any time or from any source. The college needed no change in its organization or government. That which it did need was the kindness, the patronage, the bounty of the legislature; not a mock elevation to the character of a university, without the solid benefit of a shilling's donation to sustain the character; not the swelling and empty authority of establishing institutes and other colleges. This unsubstantial pageantry would seem to have been in derision of the scanty endowment and limited means of an unobtrusive, but useful and growing seminary. Least of all was there a necessity, or pretence of necessity, to infringe its legal rights, violate its franchises and privileges, and pour upon it these overwhelming streams of litigation.

But this argument from necessity would equally apply in all other cases. If it be well founded, it would prove, that, whenever any inconvenience or evil is experienced from the restrictions imposed on the legislature by the Constitution, these restrictions ought to be disregarded. It is enough to say, that the people have thought otherwise. They have, most wisely, chosen to take the risk of occasional inconvenience from the want of power, in order that there might be a settled limit to its exercise, and a permanent security against its abuse. They have imposed prohibitions and restraints; and they have not rendered these altogether vain and nugatory by conferring the power of dispensation. If inconvenience should arise which the legislature cannot remedy under the power conferred upon it, it is not answerable for such inconvenience. That which it cannot do within the limits prescribed to it, it cannot do at all. No legislature in this country is able, and may the time never come when it shall be able, to apply to itself the memorable expression of a Roman pontiff: "*Licet hoc* DE JURE *non possumus, volumus tamen* DE PLENITUDINE POTESTATIS."

The case before the court is not of ordinary importance, nor of every-day occurrence. It affects not this college only, but every college, and all the literary institutions of the country. They have flourished hitherto, and have become in a high degree respectable and useful to the community. They have all a common principle of existence, the inviolability of their charters. It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties, and the fluctuations of political opinions. If the franchise may be at any time taken away, or impaired, the property also may be taken away, or its use perverted. Benefactors will have no certainty of effecting the object of their bounty; and learned men will be deterred from devoting themselves to the service of such institutions, from the precarious title of their offices. Colleges and halls will be deserted by all better spirits, and become a theatre for the contentions of politics. Party and faction will be cherished in the places consecrated to piety and learning. These consequences are neither remote nor possible only. They are certain and immediate.

When the court in North Carolina declared the law of the State, which repealed a grant to its university, unconstitutional

and void, the legislature had the candor and the wisdom to repeal the law. This example, so honorable to the State which exhibited it, is most fit to be followed on this occasion. And there is good reason to hope that a State, which has hitherto been so much distinguished for temperate counsels, cautious legislation, and regard to law, will not fail to adopt a course which will accord with her highest and best interests, and in no small degree elevate her reputation.

It was for many and obvious reasons most anxiously desired that the question of the power of the legislature over this charter should have been finally decided in the State court. An earnest hope was entertained that the judges of the court might have viewed the case in a light favorable to the rights of the trustees. That hope has failed. It is here that those rights are now to be maintained, or they are prostrated for ever. *Omnia alia perfugia bonorum, subsidia, consilia, auxilia, jura ceciderunt Quem enim alium appellem? quem obtester? quem implorem? Nisi hoc loco, nisi apud vos, nisi per vos, judices, salutem nostram, quæ spe exigua extremaque pendet, tenuerimus; nihil est præterea quo confugere possimus.*

Defence of Judge James Prescott*

A PETITION having been presented to the House of Representatives of the Commonwealth of Massachusetts, praying an inquiry into the official conduct of James Prescott, Esquire, Judge of Probate of Wills for the County of Middlesex, and charging him with misconduct and maladministration in office; and having been referred to a committee, who reported a statement of facts, together with resolutions setting forth that the said Prescott ought to be impeached therefor, at the bar of the Senate of the Commonwealth; on the 2d day of February, 1821, an order was passed accordingly, and the Senate demanded to take measures for his impeachment and appearance to answer thereto. A committee was thereupon appointed to prepare and report articles of impeachment; and John Glen King, Levi Lincoln, William Baylies, Warren Dutton, Samuel P. P. Fay, Lemuel Shaw, and Sherman Leland, Esquires, were appointed managers. Fifteen articles of impeachment were exhibited and read.

The articles substantially charged him with holding probate courts for transacting business at other times than those authorized by law, demanding and taking illegal fees, and acting as counsel, and receiving fees as such, in cases pending in his own court, before him, as judge.

After receiving the respondent's answer to the articles of impeachment, and hearing the evidence in support of and against the same, Messrs. Leland, Shaw, and Dutton argued the case in behalf of the managers. Mr. Hoar then opened the argument on the part of the respondent; Mr. Blake followed, and was succeeded by Mr. Webster, who spoke as follows.

MR. PRESIDENT, — I agree with the honorable managers in the importance which they have attributed to this proceeding. They

* Argument on the Impeachment of James Prescott, before the Senate of Massachusetts, on the 24th of April, 1821.

have, I think, not at all overrated that importance, nor ascribed to the occasion a solemnity which does not belong to it. Perhaps, however, I differ from them in regard to the causes which give interest and importance to this trial, and to the parties likely to be most lastingly and deeply affected by its progress and result. The respondent has as deep a stake, no doubt, in this trial, as he can well have in any thing which does not affect life. Regard for reputation, love of honorable character, affection for those who must suffer with him, if he suffers, and who will feel your sentence of conviction, if you should pronounce one, fall on their own heads, as it falls on his, cannot but excite in his breast an anxiety, which nothing could well increase, and nothing but a consciousness of upright intention could enable him to endure. Yet, Sir, a few years will carry him far beyond the reach of the consequences of this trial. Those same years will bear away, also, in their rapid flight, those who prosecute and those who judge him. But the community remains. The Commonwealth, we trust, will be perpetual. She is yet in her youth, as a free and independent State, and, by analogy to the life of individuals, may be said to be in that period of her existence when principles of action are adopted and character is formed. The honorable respondent will not be the principal sufferer, if he should here fall a victim to charges of undefined and undefinable offences, to loose notions of constitutional law, or novel rules of evidence. By the nature of moral retribution, the evil of such a course would fall most heavily on the State which should pursue it, by shaking its character for justice, and impairing its principles of constitutional liberty. This, Sir, is the first interesting and important impeachment which has arisen under the constitution of the Commonwealth. The decision now to be made cannot but affect subsequent cases. Governments necessarily are more or less regardful of precedents, on interesting public trials, and as, on the present occasion, all who act any part here have naturally considered what has been done, and what rules and principles have governed, in similar cases, in other communities, so those who shall come after us will look back to this trial. And I most devoutly hope they may be able to regard it as a safe and useful example, fit to instruct and guide them in their own duty; an example full of wisdom and of moderation; an example of cautious and temperate justice:

an example of law and principle successfully opposed to temporary excitement; an example indicating in all those who bear a leading part in the proceedings a spirit fitted for a judicial trial, and proper for men who act with an enlightened and firm regard to the permanent interests of public constitutional liberty. To preserve the respondent in the office which he fills, or to deprive him of it, may be an object of little interest to the public. But on what principles he is to be so preserved or deprived is an inquiry in the highest degree important, and in which the public has a deep and lasting interest.

The provision which the constitutions of this and other States have made, for trying impeachments before the Senate, is obviously adopted from an analogy to the English constitution. It was perceived, however, and could hardly fail to be perceived, that the resemblance was not strong between the tribunals clothed with the power of trying impeachments in this country and the English House of Lords. This last is not only a branch of the legislature, but a standing judicature. It has jurisdiction to revise the judgments of all other courts. It is accustomed to the daily exercise of judicial power, and has acquired the habit and character which such exercise confers. There is a presumption, therefore, that it will try impeachments as it tries other causes, and that the common rules of evidence, and the forms of proceeding, so essential to the rights of the accused, which prevail in other cases, will prevail also in cases of impeachment. In the construction of our American governments, although the power of judging on impeachments could probably be nowhere so well deposited as with the Senate, yet it could not but be perceived beforehand that this high act of judicature was to be trusted to the hands of those who did not ordinarily perform judicial functions; but who occasionally only, and on such occasions, moreover, as were generally likely to be attended with some excitement, took upon themselves the duty of judges. It must, nevertheless, be confessed, that few evils have been as yet found to result from this arrangement. Although in the various States of the Union there have been several impeachments, there have been fewer convictions, and fewer still in which there is just reason to suppose injustice has taken place. From the experience of the past, I trust we may form favorable anticipations of the future,

and that the judgment which this court shall now pronounce, and the rules and principles which shall guide that judgment, will be such as shall secure to the community a rigorous and unrelenting censorship over maleadministration in office, and to individuals entire protection against prejudice, excitement, and injustice.

The respondent is impeached for various instances of alleged misconduct in his office, as Judge of Probate for the County of Middlesex. In order that we may understand the duties which he is charged with violating, it is necessary to inquire into the origin and nature of these duties, and to examine the legal history of the Commonwealth in regard to the officers who, from time to time, have executed and performed these duties. It is now two centuries since our ancestors established a colony here. They brought with them, of course, the general notions with regard to property, the administration of justice, and the peculiar powers and duties of different tribunals, which they had formed in the country which they left; and these notions and general ideas they adopted in practice, with such modifications as circumstances rendered necessary. In England, they had been accustomed to see the jurisdiction over wills and administrations exercised in the spiritual courts, by the bishops or their ordinaries. Here, there were no such courts. Still it was a necessary jurisdiction, to be exercised by some tribunal, and in the early history of the colony it was exercised by the same magistrates, or some of them, on whom the other portions of judicial power were conferred. Wills were proved and administrations granted by the county magistrates, essentially in the same manner as in England by the bishops or their delegates. It seems that any two magistrates, with the clerk of the county court, might prove a will, and cause it to be recorded in the county court, and might grant administrations in like manner.*

At length, by the act of 1685,† it was expressly declared that the county court, in cases of probate of wills and the granting of administrations, should have the same power and authority *as the ordinary in England.*

* Ancient Charters, 204 † Ibid. 205.

By the provincial charter of 1692, all power and jurisdiction in the probate of wills and granting administration was conferred on the Governor and Council. The executive thus became supreme ordinary, and by the provisions of the statutes was to exercise the same power and authority as were exercised by the ordinary in England.

At this time no statute had regulated fees in the probate office; and yet it is not probable that business was done there at that time without fees, any more than at later periods. We must look, therefore, for some other authority than a statute permission for the establishment and regulation of fees in this office. And as the Governor and Council possessed the general power of the courts in England, it is material to inquire into the authority and practice of those courts in this particular. There can be no doubt that, in the English courts, fees, in cases of probate and administration, were, from early times, in most cases regulated by custom and the authority and direction of the courts themselves, without statute provisions. A table of fees, established in 1597, in the time of Archbishop Whitgift, may be seen in Burn's Ecclesiastical Law.*

This table sets forth a long list of charges and fees of office accruing in the administration of estates, such as for "administration," which probably means decreeing administration, "commission," which is the letter of administration, "interlocutory decree," "examination of account," "respite of inventory," "caveat," "citation," "quietus," and many others. At this time there was no statute which established the fees of office in cases of administration, except one single provision in the statute of 21 Hen. VIII. ch. 5, which enacted, that for granting administration on goods under forty pounds, the judge should receive no more than two shillings and sixpence. It appears from the preamble of that statute, that no previous law was existing on the subject, and the grievance recited is, that the bishops and their ordinaries demanded and received greater fees for the probation of testaments, and other things thereunto belonging, than had been aforetime usual and accustomed. The preamble recites also, that an act of Henry the Fifth had ordained that no ordinary should take, for the probation of tes-

* Vol. II. p. 266.

taments or other things to the same belonging, any more than was accustomed and used in the time of King Edward the Third, *which act did endure but to the next Parliament by reason that the said ordinaries did then promise to reform and amend their exactions;* but, inasmuch as the evil was still continued and aggravated, the act proceeded to limit and fix fees of office for the probate of wills, and for other services respecting testate estates, and contains the single provision above mentioned, and no more, respecting administrations on intestate estates.

It is entirely clear and certain, that the fees of bishops and their ordinaries did not have their origin in the grant or provision of any act of Parliament. Such acts were passed only to restrain and limit the amount, and to prevent exaction and extortion. The right to demand and receive fees rested on the general principle of a right to compensation for services rendered; and, in the absence of statute limitations, the amount was ascertained by the practice and usage of the courts, being reasonable and proper. Hence it happened in England that different fees were paid, and probably still are, in the different dioceses, according to the usage of different courts, and the time when their tables of fees were respectively established. "In the several dioceses there are tables of fees, different, as it seemeth, in the several charges, in proportion to the difference of times wherein they have been established."* This is precisely what has happened, and what, whether we are allowed to prove it or not, every member of this court knows now exists, in relation to the different counties of this Commonwealth.

It is most material to the respondent's case to understand clearly on what ground it is that, as Judge of Probate, he had a right to receive fees for services performed in his office. There is a difference of opinion, in matter of law, in this respect, between the managers and ourselves, wide enough, in my judgment, to extend over the whole case. If the House of Representatives be right in the legal doctrine which their managers have introduced here, I agree at once that the case is against the respondent, unless, indeed, an indulgence may be allowed to his infirmity in not understanding the law as it is now as-

* 2 Burn, 269.

serted. I will proceed to state the question now at issue between the managers and us, as clearly as I may be able. The managers contend, that all fees of office in such offices as the respondent's arise only from the express grant of the legislature, and that none can be claimed where such grant is not shown. We, on the other hand, humbly submit that the right, in such offices, to receive fees, is the general right to receive reasonable compensation for services rendered and labor performed, and is no otherwise affected by statute than as the amount of fees is or may be thereby limited.

It is certain that judges of probate in this State are required to perform many acts (such, for instance, as granting guardianship to persons *non compotes mentis*), for which no fees are specifically established by the statute. One of the learned managers has expressly advanced the proposition, that for such services the judge is entitled to receive no fees whatever. He contends that the law presumes him to be adequately paid, on a sort of average, for all services by him performed, by the fees specially provided for some. On the contrary, we very humbly insist, that in all such cases the judge has a right to receive a just and reasonable fee of office for the service performed; the amount to be settled on proper principles, and, as well as in any way, by analogy to similar services, for which the amount of fees is fixed by statute. The statute, for example, establishes the fee for a grant of guardianship over minors. It establishes none for guardianship over persons *non compotes mentis*. The precise difference between the learned managers and us is, that they contend that, in the last case, the judge is entitled to receive no fee at all; while we think that he has a right to receive, in such case, a reasonable fee, and that what is reasonable may fairly be determined by reference to what the law allows him in the case of guardianship over minors.

I rejoice, Sir, in behalf of my client, that we have here a plain, intelligible question of law to be discussed and decided. This is a question in which neither prerogative nor discretion has aught to do. It is not to be decided by reasons of state, or those political considerations which we have heard so often, but so indefinitely, and in my judgment so alarmingly, referred to, and relied on, in the opening speeches of more than one of

the learned managers. It may possibly happen, Sir, to the learned managers to share the fortunes of the gods in Homer's battles. While they keep themselves in the high atmosphere of prerogative and political discretion, and assail the respondent from the clouds, the advantage in the controversy may remain entirely with them. When they descend, however, to an equal field of mortal combat, and consent to contend with mortal weapons, *cominus ense*, it is probable they may sometimes get, as well as give, a wound. On the present question, we meet the learned managers on equal terms and fair ground, and we are willing that our client's fate should abide the result. The managers have advanced a plain and intelligible proposition, as being the law of the land. If they make it out, they show a good case against the respondent; if they fail so to do, then their case, so far as it rests on this proposition, fails also. Let, then, the proposition be examined.

The proposition is, as before stated, that for services which the law requires judges of probate to perform, but for which there is no particular fee established or provided by statute, they can receive no fee whatever.

In the first place, let it be remarked, that, of the various duties and services required of judges of probate, some grow out of the very nature of their office, and are incidental to it, or arise by common law; others were imposed by statutes passed before the establishment of any fee bill whatever, and others, again, by statutes passed since. The statute commonly called the fee bill was passed for the regulation of fees in other courts, and other offices, as well as of the judges and registers of probate. It imposes no duty whatever on any officer. It treats only of existing duties, and of those no farther than to limit fees. It declares that "the fees of the several persons hereafter mentioned, for the services respectively annexed to their names, shall be as follows," and so forth. The statute then proceeds to enumerate, among other things, certain services of the judges of probate; but it is acknowledged that it does not enumerate or set forth all the services which the law calls on them to perform.

In our opinion, Sir, this is simply a restraining statute. It fixes the amount of fees in the cases mentioned, leaving every thing else as it stood before. I have already stated, that, in

England, fees in the ecclesiastical courts, for probate of wills, and granting administrations, were of earlier date than any statute respecting them, and their amount ascertained by usage and the authority of the courts themselves. "The rule is," says Dr. Burn, "the known and established custom of every place, being reasonable." *

And if the reasonableness of the fee be disputed, it may be tried by jury, whether the fee be reasonable.† If this be so, then clearly there exists a right to some fee, independent of a particular statute; for if there be no right to any fee at all, why refer to a jury to decide what fee would be reasonable? But the law is still more express on this point. "Fees are certain perquisites allowed to officers in the administration of justice, as a recompense for their labor and trouble; ascertained either by acts of Parliament or by ancient usage, which gives them an equal sanction with an act of Parliament." "All such fees as have been allowed by courts of justice to their officers, as a recompense for their labor and attendance, are established fees; and the parties cannot be deprived of them without an act of Parliament." ‡

I may add, that fees are recoverable, in an action of *assumpsit*, as for work and labor performed. The doctrine contended for on the other side is contradicted, in so many words, by a well-settled rule; namely, that if an office be erected for the public good, though no fee is annexed to it, it is a good office; and the party, for the labor and pains which he takes in executing it, may maintain a *quantum meruit*, if not as a fee, yet as a compensation for his trouble.§

The universal practice, Sir, has corresponded with these rules of law. Almost every officer in the Commonwealth, whose compensation consists in fees of office, renders services not enumerated in the fee bill, and is paid for those services; and this through no indulgence or abuse, but with great propriety and justice. Allow me to mention one instance, which may be taken as a sample of many. Some thousands of dollars are paid every year to the clerks of the several Courts of Common

* 4 Burn's Ecclesiastical Law, 267.
† 1 Salkeld, 333.
‡ Coke, Lit. 368; Prec. Chan. 551; Jacob's Law Dict., "Fees."
§ Moore, 808; Jac., "Fees," (A. E.); Hard. 355; Salk. 333.

Pleas in this State, for certified copies of papers and records remaining in their offices. The fee bill neither authorizes the taking of any such fee, nor limits its amount, nor mentions it in any way. There are other instances, equally clear and strong, and they show us that all the courts of justice, and all the officers concerned in its administration, have understood the law as the respondent has understood it; and that the notion of the learned managers derives as little support from practice, as it does from reason or authority. The learned managers have produced no one opinion of any writer, no decision of any court, and, as I think, no shadow of reason, to sustain themselves in the extraordinary ground which they have taken; ground, I admit, essential to be maintained by them, but which the respondent could devoutly wish they had taken somewhat more of pains to examine, before, on the strength of it, they had brought him to this bar. I submit it, Sir, to the judgment of this court, and to the judgment of every judge and every lawyer in the land, whether the law be not, that officers paid by fees have a right to such fees, for services rendered, on the general principle of compensation for work and labor performed; the amount to be ascertained by the statute, in cases in which the statute has made a regulation; and, in other cases, by analogy to the services which are especially provided for, and by a consideration of what is just and reasonable in the case. With all my respect, Sir, for the learned managers, it would be mere affectation if I were to express myself with any diffidence on this part of the case, or should leave the topic with the avowal of any other feeling than surprise, that a judge of the land should be impeached and prosecuted upon the foundation of such opinions as have in this particular been advanced.

Before I proceed further, Sir, I wish to take notice of a point, perhaps not entirely essential to the case. The respondent, in his answer, has stated that the jurisdiction of judges of probate consists of two parts, commonly called the amicable or voluntary and the contentious jurisdiction. One of the learned managers has said, that this distinction can by no means be allowed, and has proceeded to state, if I rightly understood him, that the voluntary jurisdiction of the English ecclesiastical courts has not, in any part of it, devolved on, and been granted to, the judges of probate here. As it is not perhaps material

for the present discussion to ascertain precisely what is the true distinction between the voluntary and the contentious jurisdiction of the ecclesiastical courts, as understood in England, I shall content myself with reading a single authority on the subject. Dr. Burn says: "Voluntary jurisdiction is exercised in matters which require no judicial proceeding, as in granting probate of wills, letters of administration, sequestration of vacant benefices, institution, and such like; contentious jurisdiction is where there is an action or judicial process, and consisteth in the hearing and determining of causes between party and party." *

It can be now at once seen, Sir, whether any part of the jurisdiction exercised by judges of probate in this State be *voluntary*, within this definition of the distinction between voluntary and contentious.

After these observations, Sir, on the general nature and origin of fees accruing in the probate offices, I shall proceed to a consideration of the charges contained in these articles.

And the first inquiry is, whether any misconduct or maladministration in office is sufficiently charged upon the respondent in any of them. To decide this question, it is necessary to inquire, what is the law governing impeachments; and by what rule questions arising in such proceedings are to be determined. My learned colleague, who has immediately preceded me, has gone very extensively into this part of the case. I have little to add, and shall not detain you by repetition. I take it, Sir, that this is a court; that the respondent is brought here to be tried; that you are his judges; and that the rule of your decision is to be found in the constitution and the law. If this be not so, my time is misspent in speaking here, and yours also in listening to me. Upon any topics of expediency or policy; upon a question of what may be best, upon the whole; upon a great part of those considerations with which the leading manager opened his case, I have not one word to say. If this be a court, and the respondent on his trial before it; if he is to be tried, and can only be tried for some offence known to the constitution and the law; and if evidence against him can be produced only according to the ordinary rules, then, indeed, coun-

* Vol [illegible] 2.

sel may possibly be of service to him. But if other considerations, such as have been plainly announced, are to prevail, and that were known, counsel owe no duty to their client which could compel them to a totally fruitless effort for his defence. I take it for granted, however, Sir, that this court feels itself bound by the constitution and the law; and I shall therefore proceed to inquire whether these articles, or any of them, are sustained by the constitution and the law.

I take it to be clear, that an impeachment is a prosecution for the violation of existing laws; and that the offence, in cases of impeachment, must be set forth substantially in the same manner as in indictments. I say *substantially*, for there may be in indictments certain technical requisitions, which are not necessary to be regarded in impeachments. The constitution has given this body the power of trying impeachments, without defining what an impeachment is, and therefore necessarily introducing, with the term itself, its usual and received definition, and the character and incidents which belong to it. An impeachment, it is well known, is a judicial proceeding. It is a *trial*, and conviction in that trial is to be followed by forfeiture and punishment. Hence the authorities instruct us, that the rules of proceeding are substantially the same as prevail in other criminal proceedings.* There is, on this occasion, no manner of discretion in this court, any more than there is, in other cases, in a judge or a juror. It is all a question of law and evidence. Nor is there, in regard to the evidence, any more latitude than on trials for murder, or any other crime, in the courts of law. Rules of evidence are rules of law, and their observance on this occasion can no more be dispensed with than any other rule of law. Whatever may be imagined to the contrary, it will commonly be found, that a disregard of the ordinary rules of evidence is but the harbinger of injustice. Tribunals which do not regard those rules seldom regard any other; and those who think they may make free with what the law has ordained respecting evidence, generally find an apology for making free also with what it has ordained respecting other things. They who admit or reject evidence according to no other rule than their own good pleasure, generally decide every thing else by the same rule.

* 2 Wooddeson, 611; 4 Bl. Comm. 259; 1 H. P. C. 150; 1 Chitty's Criminal Law, 169.

This being, then, a judicial proceeding, the first requisite is, that the respondent's offence *should be fully and plainly, substantially and formally, described to him.* This is the express requisition of the constitution. Whatever is necessary to be proved must be alleged; and it must be alleged with ordinary and reasonable certainty. I have already said, that there may be necessary in indictments certain technical niceties, which are not necessary in cases of impeachments. There are, for example, certain things necessary to be stated, in strictness, in indictments, which, nevertheless, it is not necessary to prove precisely as stated. For instance, an indictment must set forth, among other things, the particular day when the offence is alleged to have been committed; but it need not be proved to have been committed on that particular day. It has been holden, in the case of an impeachment, that it is sufficient to state the commission of the offence to have been on or about a particular day. Such was the decision in Lord Winton's case, as may be seen in 4 Hatsell's Precedents, 297. In that case, the respondent, being convicted, made a motion to arrest the judgment, on the ground that "the impeachment was insufficient, for that the time of committing the high treason is not therein laid with sufficient certainty." The principal facts charged in that case were laid to be committed "on or about the months of September, October, or November last"; and the taking of Preston, and the battle there, which are among the acts of treason, were laid to be done "about the 9th, 10th, 11th, 12th, or 13th of November last."

A question was put to the judges, "Whether in indictment for treason or felony it be necessary to allege some certain day upon which the fact is supposed to be committed; or, if it be only alleged in an indictment that the crime was committed on or about a certain day, whether that would be sufficient." And the judges answered, that it is necessary that there be a certain day laid in the indictment, and that to allege that the fact was committed on or about a certain day would not be sufficient. The judges were next asked whether, if a certain day be alleged in an indictment, it be necessary, on the trial, to prove the fact to be committed on that day; and they answered, that it is not necessary. And thereupon the Lords resolved, that the impeachment was sufficiently certain in point of time. This

case furnishes a good illustration of the rule, which I think is reasonable and well founded, that whatever is to be proved must be stated, and that no more need be stated.

In the next place, the matter of the charge must be the breach of some known and standing law; the violation of some positive duty. If our constitutions of government have not secured this, they have done very little indeed for the security of civil liberty. "There are two points," said a distinguished statesman, "on which the whole of the liberty of every individual depends; one, the trial by jury; the other, a maxim arising out of the elements of justice itself, that no man shall, under any pretence whatever, be tried upon any thing but a known law." These two great points our constitutions have endeavored to establish; and the constitution of this Commonwealth, in particular, has provisions on this subject as full and ample as can be expressed in the language in which that constitution is written.

Allow me then, Sir, on these rules and principles, to inquire into the legal sufficiency of the charges contained in the first article.

And first, as to the illegality of the time or place of holding the court, I beg to know what there is stated in the article to show that illegality. What fact is alleged on which the managers now rely? Not one. Illegality itself is not a fact, but an inference of law, drawn by the managers, on facts known or supposed by them, but not stated in the charge, nor until the present moment made known to any body else. We hear them now contending, that these courts were illegal for the following reasons, which they say are true, as facts, viz.: —

1. That the register was absent;
2. That the register had no notice to be present;
3. That parties had not notice to be present.

Now, not one of these is stated in the article. No one fact or circumstance now relied on as making a case against the defendant is stated in the charge. Was he not entitled to know, I beg to ask, what was to be proved against him? If it was to be contended that persons were absent from those courts who ought to have been present, or that parties had no notice who were entitled to receive notice, ought not the respondent to be informed, that he might encounter evidence by evidence, and be prepared to disprove what would be attempted to be proved?

This charge, Sir, I maintain, is wholly and entirely insufficient. It is a mere nullity. If it were an indictment in the courts of law, it would be quashed, not for want of formality or technical accuracy, but for want of substance in the charge. I venture to say, there is not a court in the country, from the highest to the lowest, in which such a charge would be thought sufficient to warrant a judgment.

The next charge in this article is for receiving illegal fees for services performed. I contend that this also is substantially defective, in not setting out what sum, in certain, the defendant has received as illegal fees. It is material to his defence that he should be informed, more particularly than he here is, of the charge against him. If it be merely stated, that for divers services respecting one administration he received a certain sum, and for divers others respecting another, another certain sum, and that these sums were too large (which is the form of accusation adopted in this case), he cannot know for what service, or on what particular item, he is charged with having received illegal fees. The legal and the illegal are mixed up together, and he is only told that in the aggregate he has received too much. In some of these cases, there is a number of items or particulars in which fees are charged and received; but in the articles these items or particulars are not stated, and he is left to conjecture, out of ten, or it may be twenty, particular cases, which one it is that the proof is expected to apply to.

My colleague has referred to the cases, in which it has been adjudged, that, in prosecutions against officers for the alleged taking of illegal fees, this general manner of statement is insufficient. It is somewhat remarkable, that ancient acts of Parliament should have been passed expressly for the purpose of protecting officers exercising jurisdiction over wills and administration against prosecutions in this form; which were justly deemed oppressive. The statute 25 Ed. III. ch. 9, after reciting "that the king's justices do take indictments of ordinaries, and of their officers, of extortion, or oppressions, and impeach them, without putting in certain wherein, whereof, or in what manner, they have done extortion," proceeds to enact, "that his justices shall not from henceforth impeach the ordinaries, nor their officers, because of such indictments of general extor-

tions or oppressions, unless they say, and put in certain, in what thing, and of what, and in what manner, the said ordinaries or their officers have done extortions or oppressions."

The charge in this case ought to have stated the precise act for which the fee was taken, and the amount of the fee received. The court could then see whether it were illegal. Whereas the article, after reciting certain services performed by the respondent, some of which are mentioned in the fee bill, and others are not, alleges that for the business aforesaid the respondent demanded and received other and greater fees than are by law allowed. Does this mean that he received excessive fees for every service, or was the whole excess charged on one service? Was the excess taken on those particular services for which a specific fee is given by the statute, or was it taken for those services not mentioned in the fee bill at all? But further, the article proceeds to state, that afterwards, during and upon the settlement of said estate, the respondent did demand and receive divers sums, as fees of office, other and greater than are by law allowed; without stating at all what services were rendered, for which these fees were taken! It is simply a general allegation, that the respondent received from an administrator, in the settlement of an estate, excessive fees; without stating in any manner whatever what the excess was, or even what services were performed?

I beg leave to ask, Sir, of the learned managers, whether they will, as lawyers, express an opinion before this court that this mode of accusation is sufficient? Do they find any precedent for it, or any principle to warrant it? If they mean to say, that proceedings in cases of impeachment are not subject to rule; that the general principles applicable to other criminal proceedings do not apply; this is an intelligible, though it may be an alarming, course of argument. If, on the other hand, they admit that a prosecution by impeachment is to be governed by the general rules applicable to other criminal prosecutions; that the constitution is to control it; and that it is a judicial proceeding; and if they recur, as they have already frequently done, to the law relative to indictments for doctrines and maxims applicable to this proceeding; I again ask them, and I hope in their reply they will not evade an answer, will they, as lawyers, before a tribunal constituted as this, say that, in their opin-

ion, this mode of charging the respondent is constitutional and legal? Standing in the situation they do, and before such a court, will they say that, in their opinion, the respondent is not, constitutionally and legally, entitled to require a more particular statement of his supposed offences? I think, Sir, that candor and justice to the respondent require that the learned managers should express, on this occasion, such opinions on matters of law as they would be willing, as lawyers, here and elsewhere to avow and defend. I must, therefore, even yet again, entreat them to say, in the course of their reply, whether they maintain that this mode of allegation would be sufficient in an indictment; and if not, whether they maintain that in an impeachment it is less necessary that the defendant be informed of the facts intended to be proved against him, than it is in an indictment. The learned managers may possibly answer me, that it is their business only to argue these questions, and the business of the court to decide them. I cannot think, however, that they will be satisfied with such a reply. Under the circumstances in which he is placed, the respondent thinks that the very respectable gentlemen who prosecute him, in behalf of the House of Representatives, owe a sort of duty, even to him. It is far from his wish, however, to interfere with their own sense of their duty. They must judge for themselves on what grounds they ask his conviction from this court. Yet he has a right to ask, and he does most earnestly ask, and would repeatedly and again and again ask, that they will state those grounds plainly and distinctly. For he trusts that, if there be a responsibility, even beyond the immediate occasion, for opinions and sentiments here advanced, they will be entirely willing, as professional men, to meet it.

I now submit to this court, whether the supposed offences of taking illegal fees, as charged in this article, are set forth legally and sufficiently, either by the common rules of proceeding in criminal cases, or according to the constitution of the State.

As to the manner of stating the offence in this article, I mean the allegation that the respondent refused to give, on request, an account of items of fees received, it appears to me to be substantially right, and I have no remarks to make upon it. The question upon that will be, whether the fact is proved.

All the objections which have been made to the first article

apply equally to the second; with this further observation, that for the services mentioned in this article the fee bill makes no provision at all. The same objections apply also to the third, fourth, and fifth articles.

It seems to us, Sir, that all these charges for receiving illegal fees, without setting out, in particular, what service was done, and what was the amount of excess, are insufficient to be the foundation of a judgment against the respondent. And especially does this hold of the charge of receiving fees for services not specified in the fee bill; it not being stated what he would be properly entitled to in such cases by usage and the practice of the courts, and there being no allegation that the sum received was an unreasonable compensation for the services performed. In this respect, the articles consider that to be settled by positive law which is not so settled. The second article, for example, alleges that the respondent demanded and received, for certain letters of guardianship granted by him over persons *non compotes mentis*, "other and greater fees than are by law allowed therefor." This supposes, then, that *some* fees are allowed by law therefor; yet this is the very case in which it has been contended by the managers that no fee whatever was due; there being none mentioned in the fee bill. Between the words of the article and the tenor of the argument there appears to me to be no small hostility. Both cannot be right. They cannot stand together. There should be either a new argument to support the article, or a new article to meet the argument.

Having made these observations on the legal sufficiency of all the articles which charge the respondent with holding unlawful courts, and demanding and receiving unlawful fees, before proceeding to those which advance charges of a different nature against him, allow me to advert to the evidence which has been given on these first five articles respectively; and to consider what unlawful act has been *proved* against the respondent in relation to the matters contained in them.

In the first place, it is proved that the respondent held a special probate court at Groton, on the 14th of October, 1816; and at such court granted letters of administration to one Tarbell. This court the register did not attend. With respect to parties concerned in the business then and there to be transact-

ed, they all had notice, as far as appears; and no one has ever been heard to complain on that account.

It has now been contended, Sir, by the learned managers, that this court was holden unlawfully, because not holden at a time previously fixed by law. They maintain that judges of probate can exercise no jurisdiction, except at certain *terms*, when their court is to be holden.

On the contrary, the respondent has supposed, and has acted on the supposition, that he might lawfully hold his court, for the transaction of ordinary business, at such time and place as he might think proper; giving due and proper notice to all parties concerned. He supposes he might so have done, independently of the provisions of any statute; and he supposes, moreover, that he was authorized so to do by the express provision of the statute of 1806.

The first inquiry, then, is, whether the probate courts in this Commonwealth be not courts which may be considered as always open, and authorized at all times to receive applications and transact business, upon due notice to all parties; or whether, on the contrary, their jurisdiction can only be exercised in term, or at such stated periods and times as may be fixed by law. It is true, that the common law courts have usually fixed terms, and can exercise their powers only during the continuance of these terms. In England, the termination as well as the beginning of the term is fixed by law. With us, the first day only is fixed, and the courts, having commenced on the day fixed by law, remain in session as long as the convenience of the occasion requires.

In early ages, the whole year was one continued term. After the introduction of Christianity among the western nations of Europe, the governments ordained that their courts should be always open for the administration of justice; for the purpose, among other things, of showing their disapprobation of the heathen governments, by whom the *dies fasti et nefasti* were carefully, and, as they thought, superstitiously regarded. In the course of time, however, the Church interfered, and succeeded in rescuing certain seasons of the year which it deemed holy time, such as Christmas and Easter, from the agitations of forensic discussion. The necessities of rural labor afterwards added the harvest months to the number of the vaca-

tions. The vacations were thus carved out of the year, and what was left was term. Thus, even with regard to the common law courts, the provisions respecting terms were made, not so much for creating terms as for creating vacations. And for this reason it probably is, that as well the termination as the commencement of the term is established by law.

In respect to the spiritual courts, no such positive regulations, as far as I can learn, appear to have been made. Their jurisdiction is one which seems necessarily to require more or less of occasional, as well as stated exercise. The bishop's jurisdiction over wills and administrations was not local, but personal. Hence he might exercise it, not only when he pleased, but where he pleased; within the limits of his diocese or without. He might grant letters of administration, for instance, while without the local limits over which his jurisdiction extends, because it is a personal authority which the law appoints him to exercise. "The power of granting probates is not local, but is annexed to the person of the archbishop or bishop; and therefore a bishop, or the commissary of a bishop, while absent from his diocese, may grant probate of wills respecting property within the same; or if an archbishop or bishop of a province or see in Ireland happens to be in England, he may grant probate of wills relative to effects within his province or diocese." *

Notwithstanding this, however, the canons ordain that the ordinaries shall appoint proper places and times for the keeping of their courts; such as shall be convenient for those who are to make their appearance there. This is for the benefit of suitors. The object is, that there may be some certain times and places when and where persons having business to be transacted may expect to find the judge; and it by no means necessarily takes away the power of transacting business at other times and places. The ordaining of such a rule plainly shows, that before it was made these judges held their courts when and where they pleased, and only when and where they pleased.

If we recur again to the history of this Commonwealth, we shall find that what necessity or convenience had established in

* Toller, 66; 4 Burn, 285.

England, the same necessity or convenience soon established here. By the Colony charter no provision was made for a court for the probate of wills and granting administrations. In 1639 it was ordained that there should be records kept of all wills, administrations, and inventories.* In 1649 an act was passed requiring wills to be proved at the *county court* which should next be after thirty days from the death of the party; and that administration should be there taken. †

These county courts were courts of common law jurisdiction, and were holden at stated terms. But experience seems soon to have shown that, from the nature of probate jurisdiction, its exercise could not be conveniently confined to stated terms; for in 1652 an act was passed *authorizing two magistrates, with the recorder of the county court, to allow and approve of wills, and grant administrations; the clerk to cause the will or administration to be recorded.* ‡ The reason of passing this act is obvious. The county court consisted of many magistrates. They assembled to form a court only at stated terms. On this court the law had conferred the powers of probate of wills and granting administrations; and, like other business, it could of course only be transacted at stated terms. This was found to be an inconvenience, and the law which I have cited was passed to remedy it. So that, instead of confining the exercise of the jurisdiction of these courts to stated terms, we find the law has done exactly the contrary. Not only the analogy which they bear to other courts of similar jurisdiction, but our own history, and the early enactments of the Colonial legislature, all conspire to refute the notions which have been advanced, I cannot but think somewhat incautiously advanced, on this occasion.

The provisions of the constitution requiring judges of probate to hold their courts on certain fixed days is perfectly and strictly consistent, nevertheless, with the occasional exercise of their powers at other times. The law has had two objects in this respect; distinct, indeed, but consistent. One is, that there should be certain fixed days when it should be the duty of the judges to attend to the business of their offices and the applications of suitors; the other, that they might, when occasion required, perform such duties and attend to such applications on

* Ancient Charters, 43. † Ibid. 204. ‡ Ibid. 204.

other days. The learned managers seem to have regarded these provisions of law as repugnant, whereas they appear to us to consist perfectly well together.

If it were possible, Sir, that we were still mistaken in all this, there is yet the provision of the special law of 1806, which would seem to put an end to this part of the case. This statute has been already stated; its terms are express, and its object plain beyond all doubt or ambiguity. Not only does this act of itself afford the most complete justification to the respondent in this case, but it proves also that either the legislature or the learned managers have misunderstood the requisition of the constitution in regard to fixed days for holding probate courts. My colleagues have put this part of the argument beyond the power of any answer. I leave it where they left it.

With respect to notice to parties, I have already said that it is not at all proved, or pretended to be proved, that there was any person entitled to notice who did not receive it. It would be absurd and preposterous now to call on the respondent to give positive proof of notice to all persons concerned. As it was his duty to give such notice, it is to be presumed he did give it until the contrary appear. Besides, as no omission to give notice is stated in the article as a fact rendering the court illegal, how is he expected to come here prepared to prove notice?

I have little to add, Sir, to what my learned colleague who immediately preceded me has said respecting the necessity of the register's attending these special courts. One of the learned managers has said that the statute of 1806, which requires notice to parties, requires notice also to the register. I see no sort of reason for such a construction of the act. The words are, that the judge may appoint such times and places for holding his court as he shall deem expedient, giving public notice thereof, or notifying all concerned; and have no relation to the officers of the court. Neither the register, nor the crier, nor the door-keeper is, I should imagine, within this province; and yet I suppose one to be as much within it as the other.

The presence of the register cannot be essential to the existence of the court, any more than the presence of the clerk is essential to the existence of any other court. Like other courts, the court of probate has its clerk, called a register, but he is no more part of the court than the clerk of the Supreme Judicial Court is a component part of that court.

No provision appears to have been made by the Province laws for the appointment of a register. The ordinary, having the whole power over the subject of the probate of wills and granting administrations, might allow a clerk or register to his surrogate or not, at his pleasure. It was necessary, of course, that records should be kept, but this might be done by the judge himself, as some other magistrates keep their own records. There are certain statutes which speak of the register's office, but which seem only to mean the place where the records are kept. They contain no provision for the appointment of such an officer, nor any description of his duties.* It appears, as I am informed by the Suffolk probate records, that a register was appointed by the Governor, by virtue of his power as Supreme Ordinary, immediately after the issuing of the Provincial charter. The first provision made by him for this officer, if I mistake not, is contained in the statute of 1784,† and the duties of the officer are well described in that act. He is to be the register of wills and letters of administration, and to be *keeper* of the records. His signature or assent is necessary to the validity of no act whatever. He is to record official papers, and to keep the records and documents which belong to the office.

It is quite manifest, from the laws made under the charter as well as those enacted since the adoption of the present government, that the presence of the register has not been essential to the existence of a legal probate court. The proof of this is, that certain acts or things, by these statutes, may be done by the judge without the register. By 6 Geo. I. ch. 3, it is provided, that persons to take an inventory of one deceased shall be appointed and sworn by the judge of probate, *if the estate be in the town where he dwells, or within ten miles thereof;* otherwise, by a justice of the peace.‡ By 4 Geo. II. ch. 3, appraisers are to be sworn by the judge, if the estate be within ten miles of his dwelling-house. § By the act of March, 1784, when a minor lives more than ten miles *from the judge's dwelling-house*, his choice may be certified to the judge by a justice of the peace. These several laws plainly contemplate the performance of certain acts by the judge, not at probate courts

* 4 Will. and Mary, ch. 2.
† Massachusetts Laws, Vol. I. p. 155.
‡ Province Laws, p. 222.
§ Ibid. p. 286.

holden at stated times, and without the presence or assistance of the register.

And now, Sir, I have finally to remark, on the subject of holding these special courts, the respondent is proved to have followed the practice which he found established in the office when he was appointed to it. The existence of this practice is proved beyond all doubt or controversy by the evidence of Dr. Prescott.

As to the holding of special courts, therefore, the respondent rests his justification on what he conceives to be the general principle of law, on the express provision of the statute, and the usage which has been proved to exist before and at the time when he came into the office.

The charge, Mr. President, in the first article, of taking illegal fees, has been fully considered by other counsel. I need not detain the court by further comment. It is true that, for what is called a set of administration papers, the respondent received in this case five dollars and fifty-eight cents. It is true, also, that for the same business done at a stated court the fees would have been but three dollars and sixty cents. The reason for this difference is fully stated in the respondent's answer. But it is also true, that the usual sum at stated courts, namely, three dollars and sixty cents, is made up by the insertion of fees for sundry services not specified in the fee bill. Indeed, the learned managers have not, as has been so often before observed, even told us what would have been the precise amount of legal fees in this case. They appear to be marvellously shy of figures. If the court adopt the opinion of the learned managers, that no fees are due where none are specially provided, and that for receiving fees in such cases an officer is impeachable, then there is no doubt that the respondent may be impeached and convicted for his conduct in regard to every administration which he has granted for fifteen years; and there is as little doubt that, on that ground, any judge of probate in the Commonwealth is impeachable; as must be well known to every member of this court, whether they suffer it to be proved here or not.

It is utterly impossible to know by this article itself in what it was intended to charge the respondent with having received illegal fees. Was it for the order of notice? But the statute

allows no fee for that. Was it for granting administration? But it is not stated whether it was a litigated case or not, and therefore it cannot be known what he might lawfully receive.

It is not denied, however, that every paper executed by the judge in this case, and every service performed by him, were proper and necessary for the occasion. Even the learned managers have not contended that any thing could have been dispensed with. If, therefore, the amount did not exceed the usual sum, it would seem past all controversy, that the respondent stood justified, if he is right in the general grounds which have been assumed. This question, then, is as to the right to the additional two dollars. This, I apprehend, stands on precisely the same ground as his right to fees for services not set down in the fee bill, namely, on the ground of a *quantum meruit*, or reasonable compensation for labor performed. This special court was holden expressly for the benefit of Tarbell, and at his instance and request. He is charged only with the necessary and unavoidable expenses of the court; expenses which must be borne either by the judge himself, or by the party for whose benefit they were incurred. It was not so much an extraordinary compensation to the judge, but a reimbursement of expenses actually incurred by him. Here again he is found only to have followed the established practice of the office. He has done no more than his predecessor had done. It is clearly proved, that that predecessor did habitually hold these special courts on request, and that the necessary expenses of proceeding therein before him did exceed those of similar proceedings at the stated courts. There can be no complaint, in this case, of the *amount*. If he had a right to receive any thing, it must be conceded he did not receive too much. A practice of this sort may lead to inconvenience; possibly to abuse; but it did not originate with the respondent, nor does it appear that abuse has followed it in his hands. If he were authorized to hold these special courts, and if they were *necessarily* attended with some augmentation of expense, it would seem perfectly reasonable that those for whom the expense was incurred should defray it. The books teach us, that "an officer who takes a reward, which has been usual in certain cases, for the more diligent or expeditious performance of his duty, cannot be said to be guilty of extortion; for otherwise it would be impossible, in many cases, to have the law executed

with success." * These sums were paid voluntarily. The respondent in no proper sense demanded them. He did not refuse to do his official duty till they were paid. So of those sums paid for services not mentioned in the fee bill. Several of these things might have been done by the party himself, or his counsel; such as drawing petition, bond, and so forth. Yet it was usual to have these papers prepared at the probate office, and to pay for them, together with the other expenses. This being the usual course of things, and the party complying with it without objection, and paying voluntarily, there can be no reason, I think, to call it extortion. When the party applied, in this case, for administration papers, he must be supposed to have applied for what was usual. He received what every body else had received for fifteen years, and he paid for what he received at the customary rates, without objection. It ought to be considered, therefore, as a voluntary payment.

In this respect the present case differs from that cited from Coke. There the party refused to do an official act, till an illegal sum was paid. It was an act which the party had a right to have performed, to have it *then* performed, and to have it performed for a stated fee. Refusing to do his duty in this respect till other fees were paid, the officer doubtless was guilty of extortion. But in this case the money was paid voluntarily, for services rendered voluntarily. Most of the services were not, strictly speaking, official services. As before observed, the petition, bond, and so forth, might have been prepared elsewhere, if the party had so chosen. If he had so chosen, and had produced those papers, regularly prepared and executed, and the judge had then refused him a grant of administration, until he had, nevertheless, purchased a set of these papers out of the probate office, then this case would have resembled the one quoted. As the facts are, I think there is no resemblance.

I have thus far endeavored to show that the respondent's conduct, in relation to fees, was legal. If we have failed in this, the next question is, whether his conduct be so clearly illegal as to satisfy the court that it must have proceeded from corrupt motives. And it is to this part of our case that we supposed the evidence of what had been usual in other courts, and

* Bac. Abr., "Extortion."

thought to be legal by other judges, would be strictly applicable and highly important.

It was certainly our belief, that, as the respondent is accused of receiving illegal and excessive fees, in cases where fees are not limited by any positive law, the usage and practice of other judges in similar cases, known to the whole Commonwealth, and continued for many years, would be evidence on which the respondent might rely to rebut the accusation of intentional wrong. We have shown to this tribunal, that in an indictment on this same statute, in the Supreme Judicial Court, evidence of this sort was admitted, and the defendant acquitted on the strength of it. We had supposed it a plain dictate of common sense, that, where a judge was accused of acting contrary to law, he might show, if he could, that he acted honestly, though mistakenly, and to this end he might show that other judges had understood the law in the same way as he had understood it. And if he were able to show, not only that one judge, but many, and indeed all judges, had uniformly understood the law as he himself had, it would amount to a full defence. The learned managers have opposed the introduction of this evidence; and have prevailed on this court to reject it. Setting out with the proposition, that, by law, the respondent could receive no fees where none are expressly provided by statute, they have followed up this doctrine to the conclusion, that, if fees have been taken in any such case by the respondent, he must be convicted, although he should be able to show, as he is able to show, that every court and every judge in the State have supposed the law to be otherwise than the managers now assert it, and have uniformly acted upon that supposition. I am not, Sir, about to enter into another discussion on this point. I am persuaded it would be fruitless. The questions which we proposed to put to the witnesses are in writing, and therefore cannot easily be misrepresented. The court has, on the objection of the managers, overruled these questions, and shut out the evidence. As a matter decided in the cause, and for the purposes of the cause, we must, of course, submit to the decision. Still the question recurs, If the known usage and practice of the courts offered no rule or guide by which the respondent was to direct his conduct in relation to fees for services not enumerated in the fee bill, what rule was to direct him? What is the law which he

has broken? We ask for the rule which ought to have governed his conduct and has not governed it; we receive for answer nothing intelligible but this, that where the statute has not expressly given fees, no fees are due, and it is illegal and impeachable to receive them. If the court should be of that opinion, a case is made out against the respondent. If it should not be of that opinion, as we trust it will not, then we submit that no case has been made out against him on this charge.

As to the charge of having refused to give Tarbell an account of items or particulars of the fees demanded, it is enough to say the charge is not proved. On his cross-examination the witness would not state that he asked for items or particulars. He appears simply to have wished a general voucher, to show what sums he had paid for expenses in the probate office, and to have been told that such voucher was not necessary, as the sums would be of course allowed in his account.

I now ask, Sir, where is the proof of corruption, in relation to any of the matters charged in this first article? Where is the moral turpitude, which alone ought to subject the respondent to punishment? Is there any thing in the case which looks like injustice or oppression? As to the special courts, holden for the convenience of the party, no injury arose from them to any body. The witness himself says they were a great accommodation to him, and saved the estate much money. One learned manager has said that these courts may lead to inconvenience and abuse. He has taxed his ingenuity to conjecture, rather than to show, what possible evils might hereafter arise from them. Yet he does this with the statute open before him, which expressly authorizes these courts, and the repeal of which would seem to be the proper remedy to relieve him from his apprehensions.

On the whole, Sir, I trust that the respondent has been able to give a satisfactory answer to every thing contained in the first article; that he is not only not legally proved to be guilty, but that his conduct was in all respects unblamable and inoffensive; and that he will go from this trial, not only acquitted of the charges in the article, but also without having suffered in his reputation from the investigation which it has occasioned.

Mr. President, the remarks which have been made on the first article are generally applicable to the four succeeding, and render it unnecessary to comment on those articles, separately and particularly.

The sixth article turns out to be so little supported by any proof, that I do not deem it necessary to add to what has been said upon it. The testimony of Dr. Prescott, and the date of the letter produced, set this long-forgotten occurrence in its true light.

The seventh article appears to me to be a mere nullity. It charges no official misconduct whatever. The learned managers, I suppose, are of the same opinion, otherwise they would have been content with our admission of the article as it stands and not have contended so ardently for the privilege of proving what was not stated. I have found myself, Sir, more than once mistaken, in the course of this trial, but have not felt more sensible of my own mistakes, on any occasion, than when I found myself wrong in supposing that neither the learned managers, nor any other lawyers, could be found to contend, that in a criminal case more could be proved against a defendant than had been stated; and that it was not enough for such defendant to admit the truth of the facts in the written allegation against him, precisely as they stood, and to demand the judgment of the court thereon. The constitution says that every man's offence shall be *fully and plainly, substantially and formally*, described and set forth. The learned managers seem so to construe this provision, as that, nevertheless, if facts be not alleged which show any offence at all to have been committed, still other facts may be found, under the words *unlawfully and corruptly*, which shall amount to an offence.

This seventh article charges the respondent with no misbehavior as a judge. The only offence imputed to him is one which he is said to have committed as an attorney. These overshadowing words, "unlawfully and corruptly," beneath the protection of which the learned managers have sought to shelter themselves, are applied to the respondent's conduct simply as an attorney at law, and not as judge of probate. It is proved, in point of fact, that the respondent performed certain merely clerical labor for a guardian, for which he was paid a reasonable and moderate compensation. The sum thus paid him was

allowed, and as we suppose justly allowed, in the subsequent settlement of the guardian's account.

The eighth, ninth, tenth, eleventh, thirteenth, and fourteenth articles have been fully considered by my colleagues, and I will not detain the court by adding any thing to what they have said.

It is the twelfth of these articles, Sir, on which the learned managers seem most confidently to rely. Whatever becomes of the rest of the case, here, at least, there is thought to be a tenable ground. Here is one verdant spot, where impeachment can flourish; a sort of oasis, smiling amid the general desolation which the law and the evidence have spread round the residue of these charges.

I confess, Sir, that I approach the consideration of this article not without some apprehension. But that apprehension arises from nothing in the real nature of the charge, or in the evidence by which it is supported. My apprehension and alarm arise from this; that in a criminal trial, on a most solemn and important occasion, so much weight should be given to mere coloring and declamation, under the form of a criminal accusation. In my judgment, Sir, there is serious cause of alarm, when, in a court of this character, accusations are brought forward so exceedingly loose and indefinite, and arguments are urged in support of them so little resembling what we are accustomed to hear in the ordinary courts of criminal jurisdiction.

The offence in this article, whatever it be, instead of being charged and stated in ordinary legal language, is thrown into the form of a narrative. A story taken from the mouth of a heated, angry, and now contradicted witness, is written down at large, with every imaginable circumstance of aggravation likely to strike undistinguishing minds; and this story, thus told, is the very form in which the article is brought. Here we have, in the article itself, a narrative of all the evidence; we have a dialogue between the parties, and are favored so far as to be shown, by marks of quotation, what sentiments and sentences belong to the respective parties in that dialogue. All convenient epithets and expletives are inserted in this dialogue. We find the "urgent and repeated" demand of the respondent for fees. We perceive, also, that he is made to lead the conversation, on all occasions. He proposed to advise and instruct;

he proposed to allow the sum in the account, and it was, again, on his proposal so to insert it, that it was paid. He is represented as wanting in manners and decorum, as well as in official integrity. It is said he overheard a conversation; and that therefore he prepared to give his advice, before it was asked. In short, Sir, this article contains whatever is most likely to cause the respondent to be convicted before he is heard. I do most solemnly protest against this mode of bringing forward criminal charges. I put it to the feeling of every honorable man, whether he does not instinctively revolt from such a proceeding? In a government so much under the dominion of public opinion, and in a case in which public feeling is so easily excited, I appeal to every man of an honorable and independent mind, whether it be not the height of injustice to send forth charges against a public officer, accompanied with all these circumstances of aggravation and exasperation? Here the evidence, as yet altogether *ex parte*, the story told by a willing, if not a prejudiced witness, goes forth with the charge, embodied in the charge itself, without any distinction whatever between what is meant to be charged as an offence, and the evidence which is to support the charge. For my own part, Sir, I can conceive of nothing more unjust. Would it be tolerated for one moment in a court of law, I beg to ask, that a prosecutor, departing from all the usual forms of accusation, should tell his own story, in his own way, mix up his evidence with his charges, and his own inferences with his evidence, so that the accusation, the evidence, and the argument should all go together? A judge would well deserve impeachment and conviction who should suffer such an indictment to proceed.

In this case, the whole matter might have been stated in five lines. It is simply this, and nothing more; namely, that the respondent, wishing, as an attorney, to obtain certain fees from a guardian, promised, if they were paid, to allow them in the guardianship account, as judge; and being paid, he did so allow them. This is the whole substance and essence of the charge.

Notwithstanding our entire confidence in this court, we cannot but know that the respondent comes to his trial on this article under the greatest disadvantages. There is not a member of the court, nor a reading man in the community, who has

not read this charge, and thereby seen at once the accusation, and the evidence which was to support it. The whole story is told, with all the minute circumstances, and no ground is left for the reservation of opinion, or whereupon charity itself can withhold its condemnation. Far be it from me, Sir, to impute this to design. I know not the cause; but, so far as the respondent is concerned, I know it would have been just as fair and favorable to him, if the original *ex parte* affidavit, upon which the article was founded, had been headed as No. 12, and inserted among the articles of impeachment. This, Sir, is the true ground of the alarm which I feel, in regard to this charge; an alarm, I confess, not diminished by perceiving that this article is so great a favorite with the learned managers; for when obliged to give up one and another of their accusations, they have asked us, with an air of confidence and exultation, whether we expect them to give up the twelfth article also.

I will now, Sir, with your permission, proceed to consider whether this article states any legal offence. Stripped of every thing but what is material, it appears to me to amount to no more than this, viz.: 1. That the respondent gave professional advice to a guardian, about the concerns of his ward, and received fees for it. 2. That he allowed those fees in the guardianship account. If this be the substance of the article, then the question follows the division which I have mentioned, and is, 1. Whether he had a right to give such advice, and to be paid for it; and, 2. Whether he had a right to allow the sum so paid in the guardian's account. I think these are the only questions to be considered. It cannot be material, certainly, whether Ware, the guardian, paid the fee willingly or unwillingly. It is certain that the respondent received it. If he had no right to it, then he must take the consequences; if he had a right to it, then there was nothing wrong but Ware's want of promptitude in paying it. Nor is it of any importance, supposing him to be right in allowing this fee in the guardian's account, whether he interlined the charge in an account already drawn out, or had the account drawn over, that it might be inserted. Here, again, we find a circumstance of no moment in itself set forth so as to be prominent and striking, in this charge, and likely to produce an effect. It is said that the sum was al-

lowed by interlineation; as if the respondent had committed one crime to hide another, and had been guilty of forgery to cover up extortion. Sir, not only for the sake of the respondent, but for the sake of all justice, and in behalf of all impartiality and candor, I cannot too often or too earnestly express my extreme regret at the manner in which this charge is made. On a paper not yet finished and recorded, what harm to make an alteration, if it be of a thing in itself proper to be done? Is it not done every day, in every court? Not only affidavits, processes, and other legal papers, but also minutes, decrees, and judgments of the court, before they are recorded, are constantly altered by interlineation, by the court itself, or its order. The paper was in this case before the judge. It had not been recorded. If any new claim had then been produced, fit to be allowed, it was proper to allow it, and certainly not criminal to insert the allowance by interlineation.

If, Sir, the substance of every thing done by the respondent in this case is lawful, then there never can justly be a criminal conviction founded on the mere manner of doing it; even though the manner were believed to be as improper and indecorous as Ware would represent it. There is, therefore, no real inquiry in this case, as I can perceive, but whether the respondent had a right to give advice, and to be paid for it; and whether he had a right to allow it in the account.

And, in the first place, Sir, had the respondent a right to give professional advice to this guardian respecting the estate of his ward?

It has frequently, perhaps as often as otherwise, happened, that judges of probate have been practising lawyers. The statute-book shows that it has all along been supposed that this might be the case. There are acts which declare that in particular, specified cases, such as appeals from their own judgments, they shall not act as counsel; implying, of course, that in other cases they are expected so to act, if they see fit. Until the law of 1818, there was nothing to prevent them from being counsel for executors, administrators, and guardians, as well as any other clients. My colleague who first addressed the court has fully explained the history and state of the law in this particular. There being, then, no positive prohibition, is there any thing in the nature of the case that prevents, or should prevent,

in all cases, a judge of probate from rendering professional assistance to executors, administrators, or guardians. I say in all cases, and supposing no fraudulent or collusive intention. The legislature has now passed a law on this subject, which is perhaps very well as a general rule, and now, of course, binding in all cases. But it can hardly be contended that, before the passing of this law, a judge of probate could in no case give professional advice to persons of this character. I admit, most readily, Sir, that, if a case of collusion or fraud were proved, it would deserve impeachment. If the judge and the guardian conspired to cheat the ward, a criminal conviction would be the just reward of both. They would go into utter disgrace together, and nobody would inquire which was the unjust judge, and which the fraudulent guardian; "which was the justice, and which was the thief." But in a case of fair and honest character, where the guardian needed professional advice and the judge was competent to give it, I see no legal objection. No doubt, a man of caution and delicacy would generally be unwilling to render professional services upon the value of which he might be afterwards called upon officially to form an opinion. He would not choose to be under the necessity of judging upon his own claim. Still, there would seem to be no legal incompatibility. He must take care only to judge right. In various other cases, judges of probate are or may be called on to make allowances for moneys paid to themselves. It is so in all cases of official fees. It might be so, also, in the case of a private debt due from the estate of a ward to a judge of probate. If, in this very case, there had been a previous debt due from Ware's ward to the respondent, might he not have asked Ware to pay it? Nay, might he not have "demanded" it? Might he not even have ventured to make an "urgent and repeated request" for it? And if he had been so fortunate as to obtain it, might he not have allowed it in Ware's guardianship account? And although he had been presumptuous enough to insert it, by interlineation, among other articles in the account, before it was finally allowed and passed, instead of drawing off a new account, would even this have been regarded as flagrant injustice or high enormity? Now, I maintain, Sir, that the respondent had in this case a right to give professional advice, and a right to be paid for it;

and until paid his claim was a debt due him from the ward's estate, which he might treat like any other debt. He might receive it as a debt, and then, as a debt paid, allow it in the guardian's account.

As before observed, the first question is, whether he could rightfully give this advice. It was certainly a case in which it was proper for the guardian to take legal advice of somebody. The occasion called for it, and we find the estate to have been essentially benefited by it. It is among the clearest duties of those who act in situations of trust to take legal advice whenever it is necessary. If they do not, and loss ensues, they themselves, and not those whom they represent, must bear that loss. There can be no clearer ground on which to make executors, administrators, and guardians personally liable for losses which happen to estates under their care, than negligence in not obtaining legal advice when necessary and proper. If, instead of giving this fee to the respondent, the guardian had given it to any other professional man, would any body have thought it improper? I presume no one would. Then, what was there in the respondent's situation which rendered it improper for him to give the advice? It concerned no matter that could come before him. It was wholly independent of any proceeding that had arisen, or could arise, in his court. It interfered in no way with his judicial duty, any more than it would have done to give the same advice to the ward himself, before the guardianship. He had, then, as good right to give this advice to the guardian as he would have had to give it to the ward.

And, Sir, in the second place, I think it plain that, if he had a right to give the advice, and to be paid for it, he had not only the right, but was bound, to allow it in the guardian's account. This article is attempted to be supported altogether by accumulating circumstances, no one of which bears resemblance to any thing like a legal offence. Is the respondent to be convicted for having given the advice? "No," it is said, "not that alone, but he demanded a fee for it." Is he to be convicted, then, for giving advice, and for demanding a fee for it, it not being denied that it was a fit occasion for somebody's advice? "No, not convicted for that alone, but he insisted on a fee, and was urgent and pressing for it." If he had a right

to the fee, might he not insist upon it, and be urgent for it, till he got it, without a violation of law? "But then he promised to allow it in the guardian's account, and obtained it by means of this promise, and did afterwards allow it." But if it ought to be paid, and the guardian paid it, ought it not to be allowed in his account, and could it be improper for the respondent to say he should so allow it, and actually so to allow it? "But did he not allow it by interlineation?" What sort of interlineation? The account was before him, unrecorded; this came forward as a new charge; and for convenience, and to save labor, it was inserted among other charges, without making a copy of the paper; and this is all the interlineation there is in the case.

I now ask you, Sir, I put it to every member of this court, upon his oath and his conscience, to say to which of these circumstances the guilt attaches. Where is the crime? If this charge had been carried to the account without interlineation, would the respondent have been guiltless? If not, then the interlineation does not constitute his guilt. If the fee had been paid to some one else, and then allowed, in the same manner it was allowed, would the respondent have been guiltless? If so, then the crime is not in the manner of allowing the charge. If the guardian had urged and pressed for the respondent's advice, and in receiving it had paid for it willingly and cheerfully, and it had been properly allowed in the account, would the respondent then have been guiltless? If so, then his mere giving advice, and taking fees for it of a guardian, does not constitute his crime. In this manner, Sir, this article may be analyzed, and it will be found that no one part of it contains the criminal matter, and if there be crime in no one part, there can be no crime in the whole. It is not a case of right acts done with wrong motives, which sometimes may show misconduct, all taken together, although each circumstance may be of itself indifferent. Here is official corruption complained of. We ask in what it consists. We demand to know the legal offence which has been committed. A narrative is rehearsed to us, and we are told that the result of that must be conviction; but on what legal grounds, or for what describable legal reason, I am yet at a loss to understand.

The article mentions another circumstance, which, whether true or false, must exceedingly prejudice the respondent, and

yet has no just bearing on the case. It is said the respondent told Ware, that, if he would pay this fee, the "overseers need know nothing about it." Now, Sir, what had the overseers to do with this? No more than the town crier. Those parts of the account which consisted of expenses incurred in their neighborhood were properly enough, though not necessarily, subjected to their examination. They had an interest in having the account right, and their approbation was a convenient voucher. But what had they to do with the propriety of the guardian's taking legal advice, for the benefit of his ward? They could not judge of it, nor were they to approve or disapprove his charge for obtaining such advice. Why, then, I ask, Sir, was this observation about the overseers introduced, not only as evidence, but into the body of the charge itself, as making a part of that charge? What part of any known legal offence does that observation, or others like it, constitute? Nevertheless, Sir, this has had its effect, and in my opinion a most unjust effect.

I will now, Sir, beg leave to make a few remarks on the evidence adduced in support of this article. Of those facts which I have thought alone material, there is no doubt; about them there is no dispute. It is true, that the respondent gave the advice, and received the fee, and allowed it in the account. If this be guilt, he is guilty. As to every thing else in the articles, as to all those allegations which go to degrade the respondent, and in some measure affect his reputation as a man of honor and delicacy, they rest on Ware, and on Ware alone. Now, Sir, I only ask for the respondent the common advantages allowed to persons on trial for alleged offences. I only entreat for him from this court the observance of those rules which prevail on all other occasions, in respect to the construction to be given to evidence, and the allowances which particular considerations render proper.

It is proved that this witness has had a recent misunderstanding with the respondent, and that he comes forward only since that misunderstanding to bring this matter into public notice. Threats of vengeance, for another supposed injury, he has been proved to have uttered more than once. This consideration alone should lead the court to receive his evidence with great caution, when he is not swearing to a substantial fact, in which he might be contradicted, but to the manner of a transaction.

Here is peculiar room for misrepresentation, and coloring, either from mistake or design. What a public officer does can be proved; but the mere manner in which he does it, every word he may say, every gesture he may make, cannot ordinarily be proved; and when a witness comes forth who pretends to remember them, whether he speaks truth or falsehood, it is most difficult to contradict him. It is in such a case, therefore, that a prejudiced witness should be received with the utmost caution and distrust.

There is, Sir, another circumstance of great weight. This is a very stale complaint. It is now nearly six years since this transaction took place. Why has it not been complained of before? There is no new discovery. All that is known now was known then. If Ware thought of it then, as he thinks of it now, why did he not complain then? What has caused his honest indignation so long to slumber? Has it not evidently been roused only by a quarrel with the respondent?

Let me ask, Sir, what a grand jury would say to a prosecutor, who, with the full knowledge of all the facts, should have slept over a supposed injury for six years, and should then come forward to prefer an indictment? What would they say especially if they found him apparently stimulated by recent resentment, and prosecuting, for one supposed ancient injury, with the heat and passion excited by another supposed recent injury? Sir, they would justly look on his evidence with suspicion, and would undoubtedly throw out his bill. Justice would demand it; and in my humble opinion justice demands nothing less on the present occasion.

But, Sir, there is one rule of a more positive nature, which I think applicable to the case; and that is, that a witness detected in one misrepresentation is to be credited in nothing. This rule is obviously founded in the plainest reason, and it would be totally unsafe to disregard it. Now if there be any one part of Ware's testimony more essential than all the rest, as to its effect in giving a bad appearance to the respondent's conduct, it is that in which he testifies that the respondent voluntecred in the case, and offered his advice before it was asked. This is a most material part of the whole story; it is indispensable to the keeping of the picture which the learned managers have drawn. And yet, Sir, in this particular Ware is distinctly and positively

contradicted by Grout. Now if we were in a court of law, a jury would be instructed, that, if they believed Ware had wilfully deviated from the truth in this respect, nothing which rested solely on his credit would be received as proved. We ask for the respondent, in this, as in other cases, only the common protection of the law. We require only that those rules which have governed other trials may govern his; and according to these rules, I submit to the court that it cannot and ought not to convict the respondent, even if the facts sworn to would, if proved, warrant a conviction, upon the sole testimony of this witness. Even if we were sure that there were no other direct departure from the truth, yet in the whole of his narrative, and the whole of his manner, we see, I think, indications of great animosity and prejudice. If the whole of this transaction were to be recited by a friendly or a candid witness, I do not believe it would strike any body as extraordinary. Any mode of telling this story which shall confine the narrative to the essential facts, will leave it, in my humble opinion, if not a strictly proper, yet by no means an illegal or impeachable transaction. Let it be remembered that a great part of his story is such as cannot be contradicted, though it be false, inasmuch as it relates to alleged conversations between him and the respondent when nobody else was present. Wherever the natural means exist of contradicting or qualifying his testimony, there it is accomplished. Whatever circumstance can be found bearing on it shows that it is in a greater or less degree incorrect. For example, Ware would represent that it was an important part of this arrangement to keep the payment of the fee from the knowledge of the overseers. This was the reason why the charge was to be inserted in the existing account, by interlineation. Yet the evidence is, that a complete copy of this very interlined account was carried home by Ware, where the overseers could see it, and would of course perceive exactly what had been done. This is utterly inconsistent with any purpose of secrecy or concealment.

Making just and reasonable allowances for the considerations which I have mentioned, I ask, is any case proved, by the rules of law, against the respondent? And further, Sir, taking the facts only which are satisfactorily established, and supposing the respondent's conduct to have been wrong, is it clearly shown

to have been intentionally wrong? If he ought not to have given the advice, is it any thing more than an error of judgment? Can this court have so little charity for human nature, as to believe that a man of respectable standing could act corruptly for so paltry an object? Even although they should judge his conduct improper, do they believe it to have originated in corrupt motives? For my own part, Sir, notwithstanding all that prejudices and prepossession may have done, and all that the most extraordinary manner of presenting this charge may have done, I will not believe, till the annunciation of its judgment shall compel me, that this court will ever convict the respondent upon this article.

I now beg leave to call the attention of the court to one or two considerations of a general nature, and which appear to me to have an important bearing on the merits of this whole cause. The first is this, that from the day when the respondent was appointed judge of probate, down to the period at which these articles of impeachment close, from the year 1805 to 1821, there is not a single case, with the exception of that alleged by Ware, in which it is even pretended that any secrecy was designed or attempted by the respondent; there is not a single case in which he is even accused of having wished to keep any thing out of sight, or to conceal any fact in his administration, any charge which he had made, or any fee which he had taken. The evidence on which you are to judge him is evidence furnished by himself; and instead of being obliged to seek for testimony in sources beyond the respondent's control, it is his own avowed actions, his public administration, and the records of his office, which the managers of the prosecution alone have been able to produce. And yet he is charged with having acted wilfully and corruptly; as if it were possible that a magistrate, in a high and responsible station, with the eyes of the community upon him, should, for near twenty years, pursue a course of corrupt and wilful maleadministration, of which every act and every instance were formally and publicly put on record by himself, and laid open in the face of the community. Is this agreeable to the laws of human nature? Why, Sir, if the respondent has so long been pursuing a course of conscious, and wilful, and corrupt maleadministration, why do we discover none of the usual and natural

traces of such a course, some attempt at concealment, some effort at secrecy? And in all the numberless cases in which he had opportunity and temptation, why is not even a suspicion thrown out, that he has attempted to draw a veil of privacy over his alleged extortions? Is it in reason that you should be obliged to go to his own records for the proof of his pretended crimes? And can you, with even the color of probability, appeal to a course of action unsuspiciously pursued in the face of Heaven, to support an accusation of offences in their very nature private, concealed, and hidden?

Another consideration of a general nature to which I earnestly ask the attention of this honorable court is this, that after all these accusations which have been brought together against the respondent, in all these articles of impeachment, and with all the industry and zeal with which the matter of them has been furnished to the honorable managers, he is not accused, nor suspected, of the crime most likely to bring an unjust judge to the bar of this court. Show me the unjust judgment he has rendered, the illegal order he has given, the corrupt decree he has uttered, the act of oppression he has committed. What, Sir, a magistrate, charged with a long and deliberate perseverance in wilful and corrupt administration, accused of extortion, thought capable of accepting the miserable bribe of a few cents or a few dollars for illegal and unconstitutional acts, and that, too, in an office presenting every day the most abundant opportunities, and, if the respondent were of the character pretended, the most irresistible temptation, to acts of lucrative injustice; and yet not one instance of a corrupt, illegal, or oppressive judgment! I do ask the permission of this honorable court, and of every member of it, to put this to his own conscience. I will ask him, if he can now name a more able and upright magistrate, as shown in all his proceedings and judgments, in all the offices of probate in the State; one whose records are more regularly and properly kept, whose administration is more prompt, correct, and legal, whose competency to the duties is more complete, whose discharge of them is more punctual. I put this earnestly, Sir, to the conscience of every member of this honorable court. I appeal more especially to my honorable friend,* intrusted with a share of the management of this prosecution, and who has

* Hon. S. P. P. Fay.

been for twenty years an inhabitant of the county of Middlesex. I will appeal to him, Sir, and I will ask him whether, if he knew that this night his wife should be left a widow and his children fatherless, there is a magistrate in the State in whose protection he had rather they should be left, than in that of the respondent? Forgetting for a moment that he is a prosecutor, and remembering only that he is a citizen of the same county, a member of the same profession, with an acquaintance of twenty years standing, I will ask him if he will say that he believes there is a county in the State in which the office of judge of probate has been better administered for twenty years, than it has been in the county of Middlesex by this respondent. And yet, Sir, you are asked to disgrace him. You are asked to fix on him the stigma of a corrupt and unjust judge, and condemn him to wear it through life.

Mr. President, the case is closed! The fate of the respondent is in your hands. It is for you now to say, whether, from the law and the facts as they have appeared before you, you will proceed to disgrace and disfranchise him. If your duty calls on you to convict him, let justice be done, and convict him; but, I adjure you, let it be a clear, undoubted case. Let it be so for his sake, for you are robbing him of that for which, with all your high powers, you can yield him no compensation; let it be so for your own sakes, for the responsibility of this day's judgment is one which you must carry with you through life. For myself, I am willing here to relinquish the character of an advocate, and to express opinions by which I am prepared to be bound as a citizen and a man. And I say upon my honor and conscience, that I see not how, with the law and constitution for your guides, you can pronounce the respondent guilty. I declare that I have seen no case of wilful and corrupt official misconduct, set forth according to the requisitions of the constitution, and proved according to the common rules of evidence. I see many things imprudent and ill-judged; many things that I could wish had been otherwise; but corruption and crime I do not see.

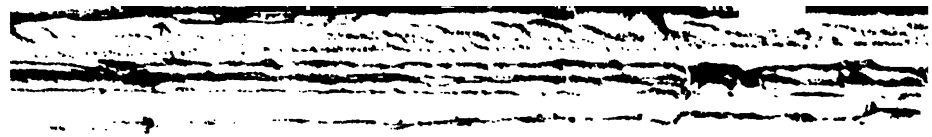
Sir, the prejudices of the day will soon be forgotten; the passions, if any there be, which have excited or favored this prosecution will subside; but the consequence of the judgment you are about to render will outlive both them and you. The respondent is now brought, a single, unprotected individual, to

this formidable bar of judgment, to stand against the power and authority of the State. I know you can crush him, as he stands before you, and clothed as you are with the sovereignty of the State. You have the power "to change his countenance and to send him away." Nor do I remind you, that your judgment is to be rejudged by the community; and, as you have summoned him for trial to this high tribunal, that you are soon to descend yourselves from these seats of justice, and stand before the higher tribunal of the world. I would not fail so much in respect to this honorable court as to hint that it could pronounce a sentence which the community will reverse. No, Sir, it is not the world's revision which I would call on you to regard; but that of your own consciences, when years have gone by and you shall look back on the sentence you are about to render. If you send away the respondent, condemned and sentenced, from your bar, you are yet to meet him in the world on which you cast him out. You will be called to behold him a disgrace to his family, a sorrow and a shame to his children, a living fountain of grief and agony to himself.

If you shall then be able to behold him only as an unjust judge, whom vengeance has overtaken and justice has blasted, you will be able to look upon him, not without pity, but yet without remorse. But if, on the other hand, you shall see, whenever and wherever you meet him, a victim of prejudice or of passion, a sacrifice to a transient excitement; if you shall see in him a man for whose condemnation any provision of the constitution has been violated or any principle of law broken down, then will he be able, humble and low as may be his condition, then will he be able to turn the current of compassion backward, and to look with pity on those who have been his judges. If you are about to visit this respondent with a judgment which shall blast his house; if the bosoms of the innocent and the amiable are to be made to bleed under your infliction, I beseech you to be able to state clear and strong grounds for your proceeding. Prejudice and excitement are transitory, and will pass away. Political expediency, in matters of judicature, is a false and hollow principle, and will never satisfy the conscience of him who is fearful that he may have given a hasty judgment. I earnestly entreat you, for your own sakes, to possess yourselves of solid reasons, founded in truth and justice, for the judgment you pronounce, which you can carry with you

till you go down into your graves; reasons which it will require no argument to revive, no sophistry, no excitement, no regard to popular favor, to render satisfactory to your consciences; reasons which you can appeal to in every crisis of your lives, and which shall be able to assure you in your own great extremity, that you have not judged a fellow-creature without mercy.

Sir, I have done with the case of this individual, and now leave it in your hands. But I would yet once more appeal to you as public men; as statesmen; as men of enlightened minds, capable of a large view of things, and of foreseeing the remote consequences of important transactions; and, as such, I would most earnestly implore you to consider fully of the judgment you may pronounce. You are about to give a construction to constitutional provisions which may adhere to that instrument for ages, either for good or evil. I may perhaps overrate the importance of this occasion to the public welfare; but I confess it does appear to me that, if this body give its sanction to some of the principles which have been advanced on this occasion, then there is a power in the State above the constitution and the law; a power essentially arbitrary and despotic, the exercise of which may be most dangerous. If impeachment be not under the rule of the constitution and the laws, then may we tremble, not only for those who may be impeached, but for all others. If the full benefit of every constitutional provision be not extended to the respondent, his case becomes the case of all the people of the Commonwealth. The constitution is their constitution. They have made it for their own protection, and for his among the rest. They are not eager for his conviction. They desire not his ruin. If he be condemned, without having his offences set forth in the manner which they, by their constitution, have prescribed, and in the manner which they, by their laws, have ordained, then not only is he condemned unjustly, but the rights of the whole people are disregarded. For the sake of the people themselves, therefore, I would resist all attempts to convict by straining the laws or getting over their prohibitions. I hold up before him the broad shield of the constitution; if through that he be pierced and fall, he will be but one sufferer in a common catastrophe.



Appendix

Notes for the Speech of March 7, 1850[1]

CAUSES which have so suddenly produced this state of things —
War declared May '46 —
Armies over run Mexico — & seized her Capitol —
Navy seized her ports —
— Feb. 48. Treaty — & cession of her Provinces —
— 900 miles of coast on Pacific.
— Revolution in California, mean while, July 1846
— Col Fremont
Soon as war known, U. S. flag hoisted —
Great numbers rushed to Mexico, in '46. '47 —
In Jan. 48 Mormons discov^{d}. gold —
Same winter, or Sp'g, Sutters & Marshall's discoveries.
In May '48 — digging commenced.
— Success incredible. Larkins Letters, June 1. & 28
Col Masons Rep^{t} Aug. 17. 48
On the peace, a new rush —
1000 large vessels — 70.000 passengers
Amt. of gold remitted — & amt. merchandize
vid Aspinwall — 6 Steamers — 4 or 5 small ones
— Trade & revenue. 15 millions of Gold to
Congress passed no law U. S. & England
2 or 3 to Oregon —
— a great deal used at home
California called a Convention — Formed a Free Constitution. —
chosen Senators & members
of Congress,
& now asks for admission.
— Her Constitution excludes SLAVERY —
— War waged for Territory — expected to be Slave Territory —
Events have decided the matter otherwise & hence the present controversy, & the present excitement.[2]

[1] From the original manuscript, in Mr. Webster's handwriting, in the New Hampshire Historical Society.

[2] All of the foregoing notes are on one leaf, endorsed on the back by Mr. Webster, "History of Events that have produced the present state of things."

Slavery

The North regards it as a great moral & political evil, &, in its nature, founded in wrong.
Slavery has existed from the earliest times.
Oriental, Jewish, Greek. Roman. Feudal Servitude
There is no positive injunction ag^{t} it, in the old Testamt or the new.
The theocracy of the Jews tolerated it
— The religion of the Gospel deals little with political relations of men.
— The teachings of Jesus Christ are addressed to the hearts & consciences of individual men.
— They seek to purify the soul, & to regulate the life
But it cannot be doubted that the principle of Slavery is opposed, in the abstract to the meek spirit of the Gospel. It is founded in the power of the strongest.
It is conquest, a permanent conquest of man over man.
It is against the law of nature.
It is like unjust war, or any other form of oppression or subjugation
These are the sentiments of the North.

It is probable many in the South are hardly prepared to deny these truths in the abstract
— But, in general, they are accustomed to it; born & bred where it exists, & taught to consider it as no wrong.
And they are honest, & conscientious, in this.
No doubt, there are thousands of men, deeply religious, & whose consciences are as tender as those of any other Christians, see no way for them but to treat their slaves with kindness & humanity
They are far from thinking, that in all cases manumission would be useful to the Slaves themselves —
The Methodist Church equally conscientious in both branches.
I have read their proceedings, & lamented the result.
When religious excitement takes place, men run to extremes —

Algebra

Absolutists. Fault finders with the sun.
Impatient waiters on Providence
They do not enough heed St. Paul.
= Mr. Butler — War-horse!
= They think they can draw light from angry clouds —
— *The want candor, & charity*

And not willing to leave things with him, who sees the end from the beginning.

How Slavery was considered, in 1789; & reason of changes

In 1789, when Constitution adopted, everybody regarded Slavery as a great evil.

The sentiment stronger in the South, or oftener expressed, because the South had more of it.

It is called now, an "Institution," a "good," a "blessing," a "Religious, moral, & social blessing —

Then it was denominated a "blight," a "blast," a "mildew," "a curse" —

Mr. Campbell's speech. — see his extracts

The Ordinance of 1787 — all the South agreed to it

Cotemporaneous with the Constitution

I honor the liberality of Va——

80 millions of Dollars

The true is that in Aug. 87. v. Association of 1774

1. Provision was made for limiting the importation of slaves, & it was believed that Slavery would gradually die out.
   Mr. Madison & others thought the time allowed too long.
2. That the Prohibition should be laid on all the Territory —
   Mr. Madison's reason for omitting the word.
3. Slavery as it existed in the States, should not be interfered with —
   In the first Congress, this was all reaffirmed, as I have stated Before —
   ☞ The whole Country unanimous, in all this.

But now: *What has caused the change?*

In the North a stronger religious feeling, & a horror at seeing Slavery increase —

In the South, *Cotton* —

In 1790–91, &c — Cotton hardly exported — vid Tables —— Sudden growth of this created eagerness for acquisition of Slave Territory —

Cession of Georgia ——— 1802
Louisiana — 1803
Florida — 1804.

And Finally *Texas*

This, the great Consummation.

And now my Gen^{l} proposition:

"There is not a foot of land, in any State or Territory of the U.

S. the character of which as to free soil or slave soil by some Law —

1st. as to Texas. read the clause of the 2. Resolution — read it
Now, what is to be said ag^{t} this?
Nothing can be stronger
Mr. Bell's first Resolution adds noth'g to it —and, looking to the difficulties of getting any prospective Resolution thro' the House, I think it best to adhere to *practical* measures & make no resolutions for the future —
— I am obliged to Mr. Clay — & Mr. Bell —
— But, referring to the difficulties of the case, I prefer to follow the Presidents recommendation.
But now Texas was brought in by Northern & New England votes — in both —
But for these votes, she must have staid out.
New England could have kept her out — but N. E. thought her —
Con: N. H. & Maine. And New York. —

Mr. Dix — & Mr. Niles. — voted for Texas, *& then turned Free Soilers* —
If they were here now, could they apply Wilmot?
It would be a violation of law & faith —
They helped to bring in every foot of Slave Territory this side the Rio Grande — &
Then turned Free Soilers —
Then set up the symbol — the empty symbol of the *Wilmot Proviso.*
— as a Gentleman careless of his stables. &c —
This matter is now absolutely settled by Law
So much for Texas

My Previous Votes —
Vid next sheet — page 2[1]

[Here there is a four page sheet in another hand, as follows:]

Speech at Niblo's Garden. *1837*
" On Admission of Texas. *1845.*
" Three Million Bill *Mar. 1st 1847.*
" Springfield — *Sept. 27–1847.*
" In Senate — Mar. 23. 1848.
" Oregon Bill Aug. 12. 1848.

[1] The notes from the lines "How Slavery was considered in 1789 & reason of changes," page 283, down to this point, are on one sheet, endorsed by Mr. Webster: "No 3. How Slavery was considered in 89– & Acquisition of Texas."

Now as for California & New Mexico

This is all Free Country by the Ordinance of Nature. There is no slave there, in our sense of that word, & never can be —
It is an Asiatic formation, & Slavery —
Immense Mountains, & deep vallies —
Especially New Mexico
—— Mountains with white tops — parched *vallies — no culture but by Irrigation*

Wilmot, here, would be perfectly without effect.

Inquire of the California Senators — & members —
— Inquire of any Body —

It is a point of honor with the South —
I do not wish to show force, merely would this point of honor

I follow the example of Mr. Polk, in Oregon
My proposition then is proved
1. As to Texas
2. As to California & New Mexico —
Then what is the value of Wilmot —
I wish to be distinct —

I shall not vote for Wilmot, in New Mexico —
Nor in Texas.

As to Texas, I will not violate faith, & repeal the Law of Congress —
As to New Mexico & California —
I will not reaffirm an Ordinance of Nature or attempt to reenact the Will of God[1]

EXTRACT FROM SPEECH IN SENATE MARCH 23d 1848.[2]

"I AM against the creation of new States. I am against the acquisition of Territory to form new States. And this, Sir, is not a matter of sentimentality, which I am to parade before mass-meetings, or before my constituents at home. It is with me no matter of declamatory regret or expressed repugnance.

It is a matter of firm unchangeable purpose to yield to no force of circumstances that have occurred or that I may consider likely to occur; and therefore I say, Sir, that if I am asked today,

[1] The notes from the line "*Now as for California and New Mexico,*" to this point are on one sheet, endorsed on the back, in Mr. Webster's handwriting, "*No 5.* California & New Mexico."

[2] This extract is in another hand.

whether for the sake of peace I will take a treaty that brings two new States into this Union, on its Southern Boundary, I say No — distinctly No! & I wish every man in the United States to understand that to be my judgement and my purpose."

And now — as to the aggressions complained of —[1]

1. By the South ag^{t}. the North.
    1. Fugitive Slaves.
        In this, the North is not without blame.
        The duty is positively enjoined by the Constitution.
        No man can, consistently with his oath, attempt to evade it, get round it, or help defeat it.
        I think the language is addressed to the States —
        "Shall be delivered up —
        I do not admit all that Mr. Berrien said, ab^{t} persons taking slaves —
        — That is more doubtful, vid. the words
        I shall vote for Mr. Butler's Bill
    2. Resolutions of Legislatures.
        Mr. Hillard
    3. Abolition Press, & abolition Societies —

    — What I think of Abolition Societies, & the Abolition Presses —
    I have expressed my opinion heretofore.
    They have done nothing but mischief — rivetted fetters.
    State of feeling in the S^{o}. Compare with 1832 —
    They have recd money eno' to purchase the liberty of all the Slaves in Maryland.
    — by contributions on the People — the result all bad.

But the *Press is free.* It cannot be restrained & Speech is free. — Nothing is said, in the Legislatures, nor by the Press, on either side, more violent than is said every day in Congress. Our Debates have corrupted the vernacular tongue.

2. Southern aggression
    1. The eagerness for new Conquests — for new Slave States.
    2. The zeal with which Slavery is pressed, & the contumely bestowed on Northern Labor.
        Northern grievances.

[1] The notes in Mr. Webster's handwriting are here resumed.

1. The South has changed Slavery, from the character in which the Constitution tolerated it, & the South acknowledged it, in 1789, — i.e. an evil to be tolerated till it should wear out; into a cherished institution, to be strengthened & increased by all possible means.
2. The South lavishes as much abuse on the Free Labor of the North, as the North does on the Slavery of the South.
3. The South inclines to war, & conquest, eagerly, in order to obtain more Slave Territory.
4. The So. insists on carrying her local law into the Territories, instead of the general law.
5. The South, tho quite a minority, insists on making her interests paramount —

Southern list of grievances, & aggressions

1. The ordinance of 1789.
2. System of Revenue which impoverishes the South. —
3. Destruction of the original equilibrium
4. The Gov^t construes its own powers.
5. Abolitionism, & the interference of Northern Legislatures, respecting fugitive Slaves
6. —

Mr. Downes.

"Northern Labor."

Educated — enlightened — free — earning wages — independent — or living on its own Capital.

4/5^{ths} of all ppy in its hands.

Is this to be compared to absolute ignorance, & abject Slavery —

No wonder the North feels indignant —

No wonder it sometimes feels, that the power is in its own hands. —[1]

SPEECH OF AUG. 12, 1848.

Let me conclude, therefore by remarking, that while I am willing to present this as showing my own judgment and position in regard to this case, and I beg it to be understood that I am speaking for no other than myself, and while I am willing to offer it to the whole world, as my own justification, I rest on these propositions —

First that when this Constitution was adopted, nobody looked

[1] The notes from the line "And now as to the aggressions complained of" to this point are endorsed by Mr. Webster, "No 6, Grievances and aggressions on both sides."

The comp^{t} is, that the North has outgrown her.

And she wishes the major vote to be placed, still, in her hands.[1]

Boundaries & Constitution of California —

& Constitution

1. Boundaries

2. Constitution

Case of Mexican Treaty

I have now two observations to make.

1st If Texas shall be inclined to dispose of a part of her vast domain bordering on New Mexico to the United States, at a reasonable price or for proper compensation, I know no objection to making the purchase and paying the sum out of the public Treasury —

2d. In speaking of the slavery of the coloured race in the United States. I have expressed no opinion upon the manner in which it might be practicable & for the benefit of all parties to reduce the number; but it has occurred to me that a system of colonization, undertaken by Govmt.[2]

Conclusion.[3]

I have gone thr^{o} If I can serve the Country, with these opinions — ready to do —

If not, still glad to have expressed them

We need no amendment of the Constitution —

We need only a just administration of it

We need forbearance & moderation —

☞ *Tennessee*

Let us raise ourselves to a just conception of duties.

The maintenance of this Constitution is one of the greatest trusts conferred on man.

It is a great, popular, Constitutional Gov^{t} defended by Law, & Judicature, & the love of the People.

Its daily respiration is liberty, patriotism, & the public good

—No monarchial throne presses its parts together —

—No military power encumbers, with iron hand.

All kind influences, have favored it

[1] The notes from the caption "Secession," page 288, are endorsed by Mr. Webster, "No. 7, Secession."

[2] The notes from "Boundaries and Constitution of California," are endorsed by Mr. Webster, "No 8 California — Constitution and Boundaries" and "No 9. Observations."

[3] What follows is endorsed, in Mr. Webster's handwriting, "No 10 Conclusion."

Now, where is secession to begin? Who is [to] take the first step? —

what is that step to be?

It must be some violation of law.

To secede from the operation of law — is to resist the law.

The object is to separate the Slave States from the free

It cannot be done —

Take the case of the Mississippi

V^a & Maryland. Who to possess & defend the Chesapeake.

— There is to be a Southern Confederacy

What States is it to embrace

Where is the frontier of Slave Confederacy to be —

What States are to join the Confederacy? —

What is to be America? The flag, the Eagle —

—What is to become of the Army? the Navy? the public lands?

Where is this City to belong? —

The States must have standing armies

They must have separate systems of Commercial regulations

They must plunge into chaos

I am sorry Mr. Calhoun suggested the possibility of secession. It affects the honor & credit of the Country.

There can be no such thing.

Secession is civil & servile war —

There can be no secession —

Nashville Convention

Mr. Windham

The dismemberment of America — !

How w^d it strike Europe!

And the way to prevent this, is, *to restore the equilibrium.*

To give the *minority* as much power as the *majority.*

This is impossible.

I agree, there may be a case, in which a majority so oppresses a minority, as to justify rebellion & revolution —

But, then, it must be rebellion & Revolution —

Within a Govt., founded on the principle of majorities, the majority must rule.

Any attempt to give equal forces to majorities & minorities is plainly preposterous —

There will be no secession, or other disruption of the Union by any causes now existing.

— The South enjoys all her original guaranties, & securities —

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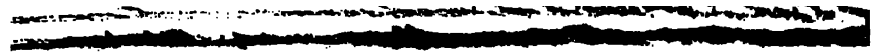

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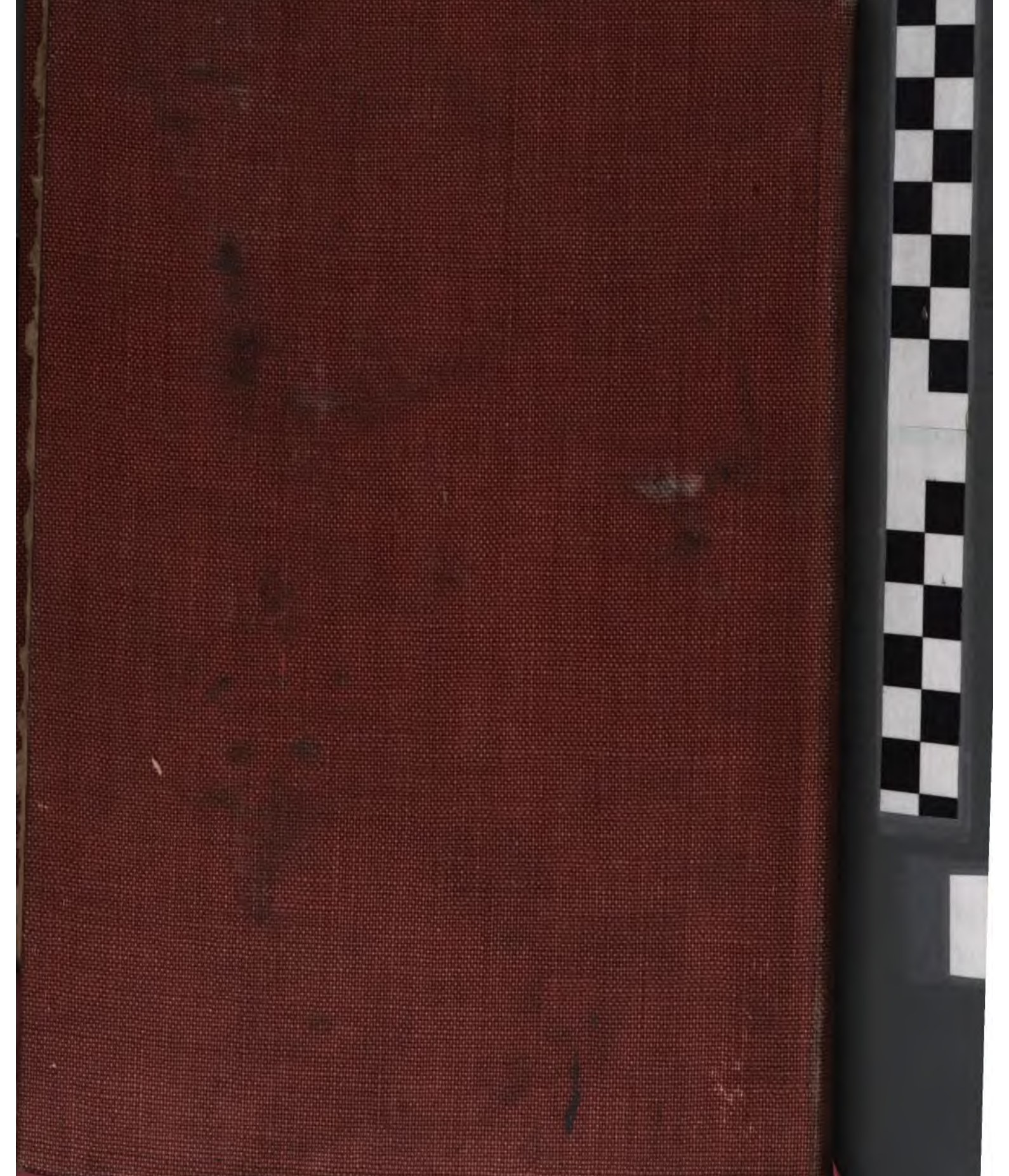
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